U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 18, 2009

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to the Committee's letter, dated March 31, 2009, which requested documents and other information relating to the Department's referral to the United States Court of Appeals for the Fifth Circuit pertaining to Judge G. Thomas Porteous, Jr.

Enclosed are 223 pages of records pertaining to the Senate confirmation of Judge Porteous, including his questionnaires and other material he supplied to the FBI. Social Security numbers have been redacted from these documents in order to protect individual privacy interests. Nonetheless, these records implicate substantial individual privacy interests and, accordingly, we request that you consult with the Department prior to disclosing their contents outside of the Committee.

The FBI is working to process additional documents responsive to your request and we will supplement this response as soon as they become available. Please do not hesitate to contact us if you would like additional assistance with this or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Lamar S. Smith
Ranking Minority Member

HP Exhibit 69(a)

Standard Form 86
Revised December 1990
U.S.Office of Personnel Management
FPM Chapter 732

QUESTIONNAIRE FOR SENSITIVE POSITIONS (For National Security)

Form approved:
O.M.B. No. 3206-0007
NSN 7540-00-634-4036
86-110

OPM USE ONLY — Codes — Case Number

Part 1

Agency Use Only (Complete items A through P using instructions in FPM Supplement 296-33)

A Type of Investigation	B Extra Coverage	C Sensitivity Level	D Access	E Nature of Action Code	F Date of Action (Month Day Year)

G Geographic Location	H Position Code	I Position Title

J SON — K Location of Official Personnel Folder: ☐ None ☐ NPRC ☐ At SON — Other Address — ZIP Code

L SOI — M Location of Security Folder: ☐ None ☐ At SOI ☐ NPI — Other Address — ZIP Code

N OPAC-ALC Number	O Accounting Data and/or Agency Case Number

P Requesting Official: Name and Title	Signature	Telephone Number FTS ( )	Date
		( )	

Persons completing this form should begin with the questions below. Please type or print your answers.

1 FULL NAME • If you have only initials in your name, use them and State (IO). • If you have no middle name, enter "NMN." • If you are a "Jr.," "Sr.," "II," etc., enter this in the box after your middle name.

2 DATE OF BIRTH

Last Name	First Name	Middle Name	Jr., II, etc.	Month	Day	Year
Porteous	Gabriel	Thomas				46

3 PLACE OF BIRTH • Use the two letter code for the State.

City	County	State	Country (if not in the United States)
New Orleans	Orleans	LA	

4 SOCIAL SECURITY NUMBER [redacted]

5 OTHER NAMES USED
Give other names you used and the period of time you used them *(for example: your maiden name, name[s] by a former marriage, former name[s], alias[es], or nickname[s])*. If the other name is your maiden name, put "nee" in front of it.

Name	Month/Year Month/Year	Name	Month/Year Month/Year
None	to		
Name	Month/Year Month/Year	Name	Month/Year Month/Year
	to		

6 OTHER IDENTIFYING INFORMATION

Height (feet and inches)	Weight (pounds)	Hair Color	Eye Color	Sex (mark one box)
5' 10"	200	Brown	Hazel	☐ Female ☒ Male

7 TELEPHONE NUMBERS

Work (Include Area Code and extension)	Home (Include Area Code)
(☒ Day) ( ) Night (504) 364-3850	( ) Day (☒ Night (504) 455-5879

8 CITIZENSHIP

a Mark the box at the right that applies to you and follow the instructions next to the box you marked.

I am a U.S. citizen by birth in the U.S.	X	Answer items b and d
I am a U.S. citizen, but I was NOT born in the U.S.		Answer items b, c, and d
I am not a U.S. citizen.		Answer items b and e

b Your Mother's Maiden Name: Wyand Farmer

c **UNITED STATES CITIZENSHIP** If you are a U.S. Citizen, but were not born in the U.S., provide information about one or more of the following proofs of your citizenship.

Naturalization Certificate (Where were you naturalized?)

Court	City	State	Certificate Number	Month/Day/Year Issued

Citizenship Certificate (Where was the certificate issued?)

City	State	Certificate Number	Month/Day/Year Issued

State Department Form 240 - Report of Birth Abroad of a Citizen of the United States

Give the date the form was prepared and give an explanation if needed.	Month/Day/Year	Explanation

U.S. Passport

This may be either a current or previous U.S. Passport.

Passport Number	Month/Day/Year Issued

d **DUAL CITIZENSHIP** If you are *(or were)* a dual citizen of the United States and another country, provide the name of that country in the space to the right. — Country: Not a dual citizen

e **ALIEN** If you are an alien, provide the following information:

Place You Entered the United States: City	State	Date You Entered U.S. Month	Day	Year	Alien Registration Number	Country of Citizenship

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9 WHERE YOU HAVE LIVED

Fill in your full address for every place you have lived beginning with the present (#1) and working backward 15 years.

- If you attended school away from your permanent residence, list the address you lived at while attending school.
- For any address in the past 3 years:
  - List a person who knew you at that address, preferably someone who still lives in that area.
  - If address listed is "General Delivery," a Rural Route, or Star Route, provide directions for locating the residence on an attached continuation sheet, and show the block #.

	Month/Year Month/Year	Street Address	Apt. #	City (Country)	State	ZIP Code
#1	Present 7/77 To Present	4801 Neyrey Dr.		Metairie	LA	70010012
Name of Person Who Knows You		Street Address	Apt. #	City (Country)	State	ZIP Code / Telephone Number
Dr. John Finnan		4701 Woodland		Metairie	LA	70010012 / 504) 456-6265
#2	6/75 To 7/77	4705 Morales St.		Metairie	LA	70010012
Name of Person Who Knows You		Street Address	Apt. #	City (Country)	State	ZIP Code / Telephone Number
						( )
#3	3/72 To 6/75	4083 Division St.		Metairie	LA	70010012
Name of Person Who Knows You		Street Address	Apt. #	City (Country)	State	ZIP Code / Telephone Number
						( )
#4	6/71 To 2/72	2136 N. Lobdell	605	Baton Rouge	LA	70818016
Name of Person Who Knows You		Street Address	Apt. #	City (Country)	State	ZIP Code / Telephone Number
						( )
#5	8/69 To 6/71	3550 Nicholson Dr.	2094	Baton Rouge	LA	70818012
Name of Person Who Knows You		Street Address	Apt. #	City (Country)	State	ZIP Code / Telephone Number
						( )
#6	9/68 To 5/69	LSU Baton Rouge, Hatcher Dorm.		Baton Rouge	LA	70818013
Name of Person Who Knows You		Street Address	Apt. #	City (Country)	State	ZIP Code / Telephone Number
						( )

10 WHERE YOU WENT TO SCHOOL

Fill in information about schools you have attended, beyond Junior High School, beginning with the most recent (#1) and working backward 15 years. Also list College or University degrees received beyond 15 years.

- For schools you attended in the past 3 years, list a person who knew you at school (such as an instructor or a student).
- For correspondence schools and extension classes, list records location address.
- In the "Code" block, use one of these codes: 1 - High School 2 - College/University 3 - Vocational/Trade School

	Month/Year Month/Year	Code	Name of School	Degree/Diploma/Other (show each degree and date received if Code 2)	Month/Year
#1	9/68 To 5/71	2	LSU School of Law	Juris Doctor	5/71
Street Address and City (Country) of School				State	ZIP Code
Hebert Law Center, Room 210, Baton Rouge				LA	70803
Name of Person Who Knew You		Street Address and City (Country)		State / ZIP Code	Telephone Number
					( )
#2	9/64 To 5/68	2	LSU in New Orleans	Bachelor of Arts	5/68
Street Address and City (Country) of School				State	ZIP Code
Lakefront, New Orleans				LA	70148
Name of Person Who Knew You		Street Address and City (Country)		State / ZIP Code	Telephone Number
					( )
#3	9/60 To 5/64	1	Cor Jesu High School		5/64
Street Address and City (Country) of School				State	ZIP Code
Name of Person Who Knew You		Street Address and City (Country)		State / ZIP Code	Telephone Number
					( )

ur Social Security Number before going to the next page → [redacted]

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11 YOUR EMPLOYMENT ACTIVITIES

Fill in your employment activities, beginning with the present (#1) and working backward 15 years. INCLUDE:

- all full-time work
- all part-time work
- all paid work
- active military duty
- self-employment
- all periods of unemployment

IN THE NUMBERED ACTIVITY SECTION USE ONE OF THESE CODES IN THE CODE BLOCK:

1 - Active military duty stations
2 - National Guard/Reserve
3 - U.S.P.H.S. Commissioned Corps
4 - Other Federal employment
5 - State Government (Non-Federal) employment
6 - Self-employment (Enter business name and/or name of person who can verify)
7 - Unemployment (Enter name of person who can verify)
8 - Federal Contractor (list Contractor, not Federal agency)
9 - Other

FOR EACH ACTIVITY SECTION, provide information requested. For example, if you had worked at XY Plumbing in Denver, CO, for 3 separate periods of time, you would enter dates and information concerning the most recent period of employment first, and provide dates, position titles, and supervisors for the two previous periods of employment in the appropriate blocks below that information. (For locations outside the U.S., show city and country.)

#1

Month/Year To Month/Year	Code	Employer's Name/Military Service/Unemployment or Self-Employment Verifier	Your Position Title
Present To 8/84	5	Judicial Dept. of La.	Judge

Employer's/Verifier's Street Address	City (County)	State	ZIP Code	Telephone Number
301 Loyola Ave.	New Orleans	LA	70112	(504) 568-574
Street Address of Job Location (if different than Employer's Address)	**City (County)**	**State**	**ZIP Code**	**Telephone Number**
Gretna Courthouse-Annex Bldg.	Gretna	LA	70053	(504) 364-385(
Supervisor's Name & Street Address (if different than Job Location)	**City (County)**	**State**	**ZIP Code**	**Telephone Number**
ugh Collins 301 Loyola Ave.	New Orleans	LA	70112	(504) 568-574

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year To Month/Year	Your Position Title & Supervisor's Name	Month/Year To Month/Year	Your Position Title & Supervisor's Name
To		To	5747 3850 5747
To		To	

#2

Month/Year To Month/Year	Code	Employer's Name/Military Service/Unemployment or Self-Employment Verifier	Your Position Title
10/73 To 8/84	5	Jefferson Parish District Attorney	Assistant District Attorney

Employer's/Verifier's Street Address	City (County)	State	ZIP Code	Telephone Number
retna Courthouse-Annex Bldg., 5th Flr.	Gretna	LA	70053	(504) 368-102
Street Address of Job Location (if different than Employer's Address)	**City (County)**	**State**	**ZIP Code**	**Telephone Number**
				( )
Supervisor's Name & Street Address (if different than Job Location)	**City (County)**	**State**	**ZIP Code**	**Telephone Number**
John Mamoulides, District Attorney	Gretna	LA	70053	(504) 368-102

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year To Month/Year	Your Position Title & Supervisor's Name	Month/Year To Month/Year	Your Position Title & Supervisor's Name
To		To	1020 1020
To		To	

#3

Month/Year To Month/Year	Code	Employer's Name/Military Service/Unemployment or Self-Employment Verifier	Your Position Title
7/82 To 8/84	9	City of Harahan	City Attorney

Employer's/Verifier's Street Address	City (County)	State	ZIP Code	Telephone Number
3437 Jefferson Highway	Harahan	LA	70123	(504) 737-638
Street Address of Job Location (if different than Employer's Address)	**City (County)**	**State**	**ZIP Code**	**Telephone Number**
				( )
Supervisor's Name & Street Address (if different than Job Location)	**City (County)**	**State**	**ZIP Code**	**Telephone Number**
layor Carlo Ferrara				( )

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year To Month/Year	Your Position Title & Supervisor's Name	Month/Year To Month/Year	Your Position Title & Supervisor's Name
To		To	6382
To		To	

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YOUR EMPLOYMENT ACTIVITIES (Continued)

#4 | Month/Year Month/Year: 4/80 to 8/84 | Code: 6 | Employer's Name/Military Service/Unemployment or Self-Employment Verifier: Porteous & Mustakas | Your Position Title: Attorney (Partner)

Employer's/Verifier's Street Address	City (Country)	State	ZIP Code	Telephone Number
1317 Nursery	Metairie	LA	70100 1515	(504) 833-52
Street Address of Job Location (if different than Employer's Address)	City (Country)	State	ZIP Code	Telephone Number
3445 N. Causeway Blvd.	Metairie	LA	70100 1012	( )
Supervisor's Name & Street Address (if different than Job Location)	City (Country)	State	ZIP Code	Telephone Number
Carlotta Cuccia (Secretary) 1317 Nursery	Metairie	LA	70100 1515	(504) 833-52

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year Month/Year	Your Position Title & Supervisor's Name	Month/Year Month/Year	Your Position Title & Supervisor's Name
To		To	
To		To	

#5 | Month/Year Month/Year: 2/76 to 4/80 | Code: 6 | Employer's Name/Military Service/Unemployment or Self-Employment Verifier: Porteous, Lee & Mustakas | Your Position Title: Attorney (Partner)

Employer's/Verifier's Street Address	City (Country)	State	ZIP Code	Telephone Number
139 Huey P. Long Ave.	Gretna	LA	70100 1515	( )
Street Address of Job Location (if different than Employer's Address)	City (Country)	State	ZIP Code	Telephone Number
				( )
Supervisor's Name & Street Address (if different than Job Location)	City (Country)	State	ZIP Code	Telephone Number
Harry Lee 100 Huey P. Long Ave.	Gretna	LA	70100 1515	(504) 363-55

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year Month/Year	Your Position Title & Supervisor's Name	Month/Year Month/Year	Your Position Title & Supervisor's Name
To		To	
To		To	

#6 | Month/Year Month/Year: 8/74 to 2/76 | Code: 6 | Employer's Name/Military Service/Unemployment or Self-Employment Verifier: Edwards, Porteous & Lee | Your Position Title: Attorney (Partner)

Employer's/Verifier's Street Address	City (Country)	State	ZIP Code	Telephone Number
139 Huey P. Long Ave.	Gretna	LA	70100 1515	( )
Street Address of Job Location (if different than Employer's Address)	City (Country)	State	ZIP Code	Telephone Number
				( )
Supervisor's Name & Street Address (if different than Job Location)	City (Country)	State	ZIP Code	Telephone Number
Marion Edwards Gretna Courthouse-Annex, 5th Flr., Gretna		LA	70100 1515	(504) 368-10

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year Month/Year	Your Position Title & Supervisor's Name	Month/Year Month/Year	Your Position Title & Supervisor's Name
To		To	
To		To	

#7 | Month/Year Month/Year: 2/73 to 7/74 | Code: 6 | Employer's Name/Military Service/Unemployment or Self-Employment Verifier: Edwards, Porteous & Amato | Your Position Title: Attorney (Partner)

Employer's/Verifier's Street Address	City (Country)	State	ZIP Code	Telephone Number
139 Huey P. Long Ave.	Gretna	LA	70100 1515	( )
Street Address of Job Location (if different than Employer's Address)	City (Country)	State	ZIP Code	Telephone Number
				( )
Supervisor's Name & Street Address (if different than Job Location)	City (Country)	State	ZIP Code	Telephone Number
Marion Edwards Gretna Courthouse-Annex, 5th Flr., Gretna		LA	70100 1515	(504) 368-10

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year Month/Year	Your Position Title & Supervisor's Name	Month/Year Month/Year	Your Position Title & Supervisor's Name
To		To	
To		To	

er your Social Security Number before going to the next page → [redacted]

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Standard Form 86A
Revised December 1990
U.S. Office of Personnel Management
FPM Chapter 736

CONTINUATION SHEET FOR QUESTIONNAIRES SF 86, SF 85P, AND SF 85

For use with the SF 86, Questionnaire for Sensitive Positions (for National Security); SF 85P, Questionnaire for Public Trust Positions; and SF 85, Questionnaire for Non-Sensitive Positions

Form approved: O.M.B. No. 3206-007 NSN 7540-01-268-4 86-202

INSTRUCTIONS: Use this form to continue your answers to "Where You Have Lived" and/or "Your Employment Activities." Follow the instructions on the form for the particular questions you are answering and give information in the same sequence. Use as many continuation sheets as you need to furnish all the requested information.

Your Name	Your Social Security Number
Porteous, Gabriel Thomas Jr.	[redacted]

WHERE YOU HAVE LIVED (Continued)

Month/Year Month/Year	Street Address	Apt. #	City (Country)	State	ZIP Code
3/56 To 6/69	2218 Madrid St.		New Orleans		70115

Name of Person Who Knows You	Street Address	Apt.#	City (Country)	State	ZIP Code	Telephone Number
						( )

Month/Year Month/Year	Street Address	Apt. #	City (Country)	State	ZIP Code
To					

Name of Person Who Knew You	Street Address	Apt.#	City (Country)	State	ZIP Code	Telephone Number
						( )

Month/Year Month/Year	Street Address	Apt. #	City (Country)	State	ZIP Code
To					

Name of Person Who Knew You	Street Address	Apt.#	City (Country)	State	ZIP Code	Telephone Number
						( )

Month/Year Month/Year	Street Address	Apt. #	City (Country)	State	ZIP Code
To					

Name of Person Who Knew You	Street Address	Apt.#	City (Country)	State	ZIP Code	Telephone Number
						( )

Month/Year Month/Year	Street Address	Apt. #	City (Country)	State	ZIP Code
To					

Name of Person Who Knew You	Street Address	Apt.#	City (Country)	State	ZIP Code	Telephone Number
						( )

YOUR EMPLOYMENT ACTIVITIES (Continued)

Month/Year Month/Year	Code	Employer's Name/Military Service/Unemployment or Self-Employment Verifier	Your Position Title
9/71 To 10/73	5	State of La., Office of the Atty. General	Special Counsel-Criminal Div.

Employer's/Verifier's Street Address	City (Country)	State	ZIP Code	Telephone Number
P.O. Box 94005	Baton Rouge	LA	70804	(504) 342-701

Street Address of Job Location (if different than Employer's Address)	City (Country)	State	ZIP Code	Telephone Number
				( )

Supervisor's Name & Street Address (if different than Job Location)	City (Country)	State	ZIP Code	Telephone Number
Jack Yelverton				( )

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year Month/Year	Your Position Title & Supervisor's Name	Month/Year Month/Year	Your Position Title & Supervisor's Name
To		To	
To		To	

Month/Year Month/Year	Code	Employer's Name/Military Service/Unemployment or Self-Employment Verifier	Your Position Title
8/70 To 5/71	6	B & L Associates	Investigator

Employer's/Verifier's Street Address	City (Country)	State	ZIP Code	Telephone Number
512 Acadia	Baton Rouge	LA	70806	(504) 751-479

Street Address of Job Location (if different than Employer's Address)	City (Country)	State	ZIP Code	Telephone Number
				( )

Supervisor's Name & Street Address (if different than Job Location)	City (Country)	State	ZIP Code	Telephone Number
Dick Barrios				( )

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year Month/Year	Your Position Title & Supervisor's Name	Month/Year Month/Year	Your Position Title & Supervisor's Name
To		To	4791
To		To	

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YOUR EMPLOYMENT ACTIVITIES (Continued)

Month/Year Month/Year	Code	Employer's Name/Military Service/Unemployment or Self-Employment Verifier	Your Position Title		
5/64 To 5/71	6	Baker's Shoe Stores	Sales Clerk		
Employer's/Verifier's Street Address		**City (Country)**	**State**	**ZIP Code**	**Telephone Number**
Westside Shopping Center		Gretna	LA	70053	( )
Street Address of Job Location (if different than Employer's Address)		**City (Country)**	**State**	**ZIP Code**	**Telephone Number**
					( )
Supervisor's Name & Street Address (if different than Job Location)		**City (Country)**	**State**	**ZIP Code**	**Telephone Number**
Anthony Indovina 4013 Cedar		Marrero	LA	70072	(504) 341-484

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year Month/Year	Your Position Title & Supervisor's Name	Month/Year Month/Year	Your Position Title & Supervisor's Name
To		To	
To		To	

Month/Year Month/Year	Code	Employer's Name/Military Service/Unemployment or Self-Employment Verifier	Your Position Title		
To					
Employer's/Verifier's Street Address		**City (Country)**	**State**	**ZIP Code**	**Telephone Number**
					( )
Street Address of Job Location (if different than Employer's Address)		**City (Country)**	**State**	**ZIP Code**	**Telephone Number**
					( )
Supervisor's Name & Street Address (if different than Job Location)		**City (Country)**	**State**	**ZIP Code**	**Telephone Number**
					( )

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year Month/Year	Your Position Title & Supervisor's Name	Month/Year Month/Year	Your Position Title & Supervisor's Name
To		To	
To		To	

Month/Year Month/Year	Code	Employer's Name/Military Service/Unemployment or Self-Employment Verifier	Your Position Title		
To					
Employer's/Verifier's Street Address		**City (Country)**	**State**	**ZIP Code**	**Telephone Number**
					( )
Street Address of Job Location (if different than Employer's Address)		**City (Country)**	**State**	**ZIP Code**	**Telephone Number**
					( )
Supervisor's Name & Street Address (if different than Job Location)		**City (Country)**	**State**	**ZIP Code**	**Telephone Number**
					( )

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year Month/Year	Your Position Title & Supervisor's Name	Month/Year Month/Year	Your Position Title & Supervisor's Name
To		To	
To		To	

Month/Year Month/Year	Code	Employer's Name/Military Service/Unemployment or Self-Employment Verifier	Your Position Title		
To					
Employer's/Verifier's Street Address		**City (Country)**	**State**	**ZIP Code**	**Telephone Number**
					( )
Street Address of Job Location (if different than Employer's Address)		**City (Country)**	**State**	**ZIP Code**	**Telephone Number**
					( )
Supervisor's Name & Street Address (if different than Job Location)		**City (Country)**	**State**	**ZIP Code**	**Telephone Number**
					( )

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year Month/Year	Your Position Title & Supervisor's Name	Month/Year Month/Year	Your Position Title & Supervisor's Name
To		To	
To		To	

Enter your Social Security Number → [redacted]

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12 PEOPLE WHO KNOW YOU WELL

List two people who know you well and live in the United States.
- Don't list spouse, other relatives, or former spouses.
- Try not to list anyone mentioned in item 9, 10, or 11.

	Name	Number Years Known	Telephone Number
#1	Don C. Gardner	23	(504) 737-6651 Day (X) or Night ( )
Home Address	(504) 737-2273 Office 40 Imperial Woods Dr. 6380 Jefferson Hwy.	City (Country) Harahan	State / ZIP Code LA 70123
#2	Name Daniel Martiny	Number Years Known 18	Telephone Number (504) 834-7676 Day (X) or Night ( )
Home Address	(504)464-9045 Office 131 Airline Hwy., Ste. 201 622 Carmenere Dr. Metairie, La. 70001	City (Country) Kenner	State / ZIP Code LA 70065

13 YOUR OUTSIDE ACTIVITIES

List any activities which you may wish to have considered as reflecting favorably on your reputation for leadership, responsibility, honesty, and integrity in the last 15 years. (Response Optional)

	Month/Year Month/Year	Activity	Location of Activity City (Country)	State
#1	4/91 to 4/92	President, Fourth & Fifth Circuit Judges Assoc.	Gretna	LA
#2	1992 to 12/92	Chief Judge, Twenty-Fourth Judicial District Court	Gretna	LA
#3	to			

14 YOUR FOREIGN ACTIVITIES

		Yes	No
a.	Do you have any foreign property, business connections, or financial interests?		X
b.	Are you now or have you ever been employed by or acted as a consultant for a foreign government, firm, or agency?		X
c.	In the last 15 years, have you had continuing contact with a national of any foreign country designated by the agency instructing you to fill out this form? (NOTE: If the agency wants you to answer this question, it will provide you with a list of countries.)		X

If you answered "Yes" to a, b, or c, explain in the space below:

15 FOREIGN COUNTRIES YOU HAVE VISITED

List foreign countries you have visited, beginning with the most current (#1) and working backward 15 years.
- Do not include countries covered in items 9, 10, and 11.
- In the "Code" block, use one of these codes: 1 - Business 2 - Pleasure 3 - Education 4 - Other

	Month/Year Month/Year	Code	Country	Month/Year Month/Year	Code	Country
#1	7/93 to 7/93	2	Bahamas	#3 7/91 to 7/91	2	Bahamas
#2	9/92 to 9/92	2	Italy, France, Spain, Greece, Sicily	#4 to		

16 YOUR MILITARY HISTORY

		Yes	No
a.	Have you served in the United States military?		X
	Have you served in the United States Merchant Marine?		X

- If your answer to both questions is "No," GO TO QUESTION 17.
- If your answer to either question is "Yes," GO TO b.

b. Starting with the most current (#1) and working backward, enter information for all periods of active service into the table below.
- Mark "O" block for Officer or "E" block for Enlisted.
- In the "Code" block, use one of these codes:
1 - Air Force 2 - Army 3 - Navy 4 - Marine Corps 5 - Coast Guard 6 - Merchant Marine 7 - National Guard

	Month/Year Month/Year	Code	Service/Certificate #	O	E	Status (Mark "X" in appropriate blocks - use State Code for National Guard) None	Active Duty	Active Reserve	National Guard (show State)	Inactive Reserve	Retired
#1	to										
#2	to										
#3	to										
#4	to										

Enter your Social Security Number before going to the next page → [redacted]

06/23/94 18:05 ☎ 011

17 YOUR RELATIVES

Give full names and enter the correct code for all relatives, living or dead, specified below:

1 - Mother *(first)* 4 - Stepfather 7 - Stepchild 10 - Stepbrother 13 - Half-sister 16 - Guardian
2 - Father *(second)* 5 - Foster parent 8 - Brother 11 - Stepsister 14 - Father-in-law
3 - Stepmother 6 - Child *(adopted also)* 9 - Sister 12 - Half-brother 15 - Mother-in-law

Full Name *(If deceased, check box on the left before entering name)*	Code	Date of Birth Month/Day/Year	Country of Birth	Country of Citizenship	Current Street Address and City *(country)* of Living Relatives	State
Wyand F. Porteous	1	1/02/15	USA	USA	deceased	
Gabriel T. Porteous, Sr.	2	1/13/09	USA	USA	deceased	
Michael P. Porteous	6	4/27/71	USA	USA	4801 Neyrey Dr. Metairie	LIA
Timothy A. Porteous	6	1/12/73	USA	USA	4801 Neyrey Dr. Metairie	LIA
Thomas A. Porteous	6	3/03/75	USA	USA	4801 Neyrey Dr. Metairie	LIA
Catherine A. Porteous	6	2/18/81	USA	USA	4801 Neyrey Dr. Metairie	LIA
Anthony J. Giardina	6	2/19/19	USA	USA	6301 Amhurst Metairie	LIA
Jovanina G. Giardina	6	7/23/19	USA	USA	6301 Amhurst Metairie	LIA

18 YOUR MARITAL STATUS

Mark one of the following boxes to show your current marital status:

1 - Never married *(go to question 19)* 3 - Separated 5 - Divorced
2 - Married 4 - Legally Separated 6 - Widowed

Current Spouse Complete the following about your current spouse.

Full Name	Date of Birth	Place of Birth *(include country if outside the U.S.)*	Social Security Number
Catherine A. Porteous Roniger	12/21/48	New Orleans, La.	[redacted]
Other Names Used *(Specify maiden name, names by other marriages, etc.) and show dates used for each name)*			
Catherine Ann Porteous	12/23/48 - 07/26/69		

Country of Citizenship	Date Married	Place Married *(include country if outside the U.S.)*	State
USA	6/28/69	New Orleans	LIA
If Separated, Date of Separation *(Mo./Day/Yr.)*	If Legally Separated, Where is the Record Located? City *(County)*		State

Address of Current Spouse *(Street, city, and country if outside the U.S.)* — State — ZIP Code
4801 Neyrey Dr., Metairie — LA — 70006

Former Spouse(s) Complete the following about your former spouse(s), use blank sheets if needed.

Full Name	Date of Birth	Place of Birth *(include country if outside the U.S.)*	State
Country of Citizenship	Date Married	Place Married *(include country if outside the U.S.)*	State
Check One, Then Give Date: ☐ Divorced ☐ Widowed	Month/Day/Year	If Divorced, Where is the Record Located? City *(Country)*	State
Address of Former Spouse *(Street, city, and country if outside the U.S.)*		State — ZIP Code	

19 PERSONS LIVING WITH YOU

Does the citizen of another country, or a United States citizen by other than birth, live at your residence? If "Yes," provide the information required below. If a United States citizen by other than birth lives with you, show both "United States" and prior country of citizenship below. Don't list your spouse or other relatives you provided in question 17.

Yes	No
	X

Name of Person	Country of Citizenship	Relationship

This concludes Part 1 of this form. If you have used Page 9, continuation sheets, or blank sheets to complete any of the questions in Part 1, give the number for those questions in the space to the right. →

Enter your Social Security Number before going to the next page → [redacted]

06/23/94 18:06 ☎ 012

Standard Form 86
Revised December 1990
U.S.Office of Personnel Management
FPM Chapter 732

QUESTIONNAIRE FOR SENSITIVE POSITIONS (For National Security)

Form approved:
O.M.B. No. 3206-0007
NSN 7540-00-634-4036
86-110

Part 2

20 YOUR SELECTIVE SERVICE RECORD — Yes | No

a. Are you a male born after December 31, 1959? If "No," go to 21. If "Yes," go to b. [ ] [X]

b. Have you registered with the Selective Service System? If "Yes," provide your registration number. If "No," show the reason for your legal exemption below. [ ] [ ]

Registration Number | Legal Exemption Explanation

21 YOUR MILITARY RECORD — Yes | No

a. Have you ever received other than an honorable discharge from the military? If "Yes," provide: [ ] [X]
Date of Discharge *(Month and Year)*: Type of Discharge:

b. Have you ever been subject to court-martial or other disciplinary proceedings under the Uniform Code of Military Justice? If "Yes," list any disciplinary proceedings in the last 15 years and all courts-martial. (Include non-judicial and Captain's mast, etc.) [ ] [X]

Month/Year	Charge or Specification / Action Taken	Place *(City and county/country if outside the United States)*	State

22 YOUR EMPLOYMENT RECORD — Yes | No

Has any of the following happened to you in the last 15 years? If "Yes," begin with the most recent occurrence and go backward, providing date fired, quit, or left, and other information requested. [ ] [X]

Use the following codes and explain the reason your employment was ended:
1 - Fired from a job
2 - Quit a job after being told you'd be fired
3 - Left a job by mutual agreement following allegations of misconduct
4 - Left a job by mutual agreement following allegations of unsatisfactory performance
5 - Left a job for other reasons under unfavorable circumstance

Month/Year	Code	Specify Reason	Employer's Name and Address	State	ZIP Code

23 YOUR POLICE RECORD *(Do not include anything that happened before your 16th birthday.)* — Yes | No

a. Have you ever been charged with or convicted of any felony offense? [ ] [X]
b. Have you ever been charged with or convicted of a firearms or explosives offense? [ ] [X]
c. Are there currently any charges pending against you for any criminal offense? [ ] [X]
d. Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs? [ ] [X]
e. In the last 5 years, have you been arrested for, charged with, or convicted for any offense(s) not listed in response to a, b, c, or d above? *(Leave out traffic fines of less than $100.)* [ ] [X]

If you answered "Yes" to a, b, c, d, or e above, explain your answer(s) in the space provided.

Month/Year	Offense	Action Taken	Law Enforcement Authority or Court *(City and county/country if outside the U.S.)*	State	ZIP Code

24 YOUR MEDICAL RECORD — Yes | No

a. Have you experienced problems on or off the job because of any emotional or mental condition? [ ] [X]
b. Have you ever seen a health care professional for any of the types of problems mentioned above? [ ] [X]

If you answered "Yes" to questions a or b, explain below.

Month/Year	Month/Year	Explanation

Enter your Social Security Number before going to the next page → [redacted]

25 ILLEGAL DRUGS AND ALCOHOL

	Yes	No
a. In the last 5 years, have you used, possessed, supplied, or manufactured any illegal drugs? When used without a prescription, illegal drugs include marijuana, cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), stimulants (cocaine, amphetamines, etc.), depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.). *(NOTE: The information you provide in response to this question will not be provided for use in any criminal proceedings against you.)*		X
b. Have you experienced problems (disciplinary actions, evictions, formal complaints, etc.) on or off a job from your use of illegal drugs or alcohol?		X

If you answered "Yes" to question a or b above, provide information relating to the types of substance(s), the nature of the activity, and any other details relating to your involvement with illegal drugs or alcohol. Include any treatment or counseling received.

Month/Year	Month/Year	Type of Substance	Explanation
	To		
	To		
	To		

26 YOUR INVESTIGATIONS RECORD

	Yes	No
a. Has the United States Government ever investigated your background? If "Yes," use the codes that follow to provide the requested information below. If "Yes," but you can't recall the investigating agency and/or the security clearance received, enter "Other" agency code or clearance code, as appropriate, and "Don't know" or "Don't recall" under the "Other Agency" heading, below. If your response is "No," or you don't know or can't recall if you were investigated and cleared, check the "No" box.		X

Codes for Investigating Agency
1 - Defense Department 4 - FBI
2 - State Department 5 - Treasury Department
3 - Office of Personnel Management 6 - Other *(Specify)*

Codes for Security Clearance Received
0 - Not Required 3 - Top Secret 5 - Q-Nonsensitive
1 - Confidential 4 - Sensitive Compartmented Information 7 - L
2 - Secret 5 - Q-Sensitive 8 - Other

Month/Year	Agency Code	Other Agency	Clearance Code	Month/Year	Agency Code	Other Agency	Clearance Code

	Yes	No
b. To your knowledge, have you ever had a clearance or access authorization denied, suspended, or revoked, or have you ever been debarred from government employment? If "Yes," give date of action and agency.		

Month/Year	Department or Agency Taking Action	Month/Year	Department or Agency Taking Action

27 YOUR FINANCIAL RECORD

	Yes	No
a. In the last 5 years, have you, or a company over which you exercised some control, filed for bankruptcy, been declared bankrupt, been subject to a tax lien, or had legal judgment rendered against you for a debt? If you answered "Yes," provide date of initial action and other information requested below.		X

Month/Year	Type of Action	Name Action Occurred Under	Name/Address of Court or Agency Handling Case	State	ZIP Code

	Yes	No
b. Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government. *(If an SF 171, Application for Federal Employment, will be attached, you do not need to repeat Federal Government delinquencies. See the instructions headed, "How is the SF 171 used with this form?")*		

If you answered "Yes," provide the information requested below:

Month/Year	Type of Loan or Obligation and Account #	Name/Address of Creditor or Obligee	State	ZIP Code

Enter your Social Security Number before going to the next page →

26 YOUR ASSOCIATION RECORD	Yes	No
a. In the last 15 years, have you been an officer or a member or made a contribution to an organization dedicated to the violent overthrow of the United States Government and which engages in illegal activities to that end, knowing that the organization engages in such activities with the specific intent to further such activities?		X
b. In the last 15 years, have you knowingly engaged in any acts or activities designed to overthrow the United States Government by force? If you answered "Yes" to a or b, explain in the space below:		X

Continuation Space

Use the continuation sheet(s) *(SF 86A)* for additional answers to questions 9, 10, and 11. Use the space below to continue answers to all other questions and any information you would like to add. If more space is needed than what is provided below, use a blank sheet(s) of paper. Start each sheet with your name and Social Security Number. Before each answer, identify the number of the question.

After completing Parts 1 and 2 of this form and any attachments, you should review your answers to all questions to make sure the form is complete and accurate, and then sign and date the following certification and sign and date the release on page 10. If you attach an SF 171, Application for Federal Employment, make sure that it is updated and that any information added to the SF 171 is initialed and dated.

Certification That My Answers Are True

I read each question asked of me and understood each question. My statements on this form, and any attachments to this form, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both.

Signature (Sign in ink) [redacted] Date [redacted]

Enter your Social Security Number before going to the next page [redacted]

08/23/94 18:09

Standard Form 86
Revised December 1990
U.S.Office of Personnel Management
5 CFR Chapter 732

Form approved:
O.M.B. No. 3206-0007
NSN 7540-00-634-4036
86-110

UNITED STATES OF AMERICA

AUTHORIZATION FOR RELEASE OF INFORMATION

Carefully read this authorization to release information about you, then sign and date it in ink.

I Authorize any investigator, special agent, or other duly accredited representative of the U.S. Office of Personnel Management, the Federal Bureau of Investigation, the Department of Defense, and any authorized Federal agency, to obtain any information relating to my activities from schools, residential management agents, employers, criminal justice agencies, retail business establishments, or other sources of information. This information may include, but is not limited to, my academic, residential, achievement, performance, attendance, disciplinary, employment history, and criminal history record information.

I Understand that, for financial or lending institutions, medical institutions, hospitals, health care professionals, and other sources of information, a separate specific release will or may be needed, and I may be contacted for such a release at a later date.

I Further Authorize the U.S. Office of Personnel Management, the Federal Bureau of Investigation, the Department of Defense, and any other authorized agency, to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for, assignment to, or retention in, a sensitive position, in accordance with 5 U.S.C. 9101.

I Authorize custodians of records and sources of information pertaining to me to release such information upon request of the investigator, special agent, or other duly accredited representative of any Federal agency authorized above regardless of any previous agreement to the contrary.

I Understand that the information released by records custodians and sources of information is for official use by the Federal Government only for the purposes provided in this Standard Form 86, and may be redisclosed by the Government only as authorized by law.

Copies of this authorization that show my signature are as valid as the original release signed by me. This authorization is valid for two (2) years from the date signed.

Signature (Sign in Ink)	Full Name (Type or Print Legibly)		Date Signed
[signature]	Gabriel Thomas Porteous, Jr.		April 7, 1994
Other Names Used			Social Security Number [redacted]
Current Address (Street, City)	State	ZIP Code	Area Telephone Number (Include Area Code)
4801 Neyrey Dr., Metairie	LA	70010012	(504) 455-5879

G. THOMAS PORTEOUS, JR.

Birth:	December 15, 1946	New Orleans, Louisiana
Legal Residence:	Louisiana	
Marital Status:	Married	Carmella Giardina Porteous 4 children
Education:	1964 - 1968	Louisiana State University B.A. degree
	1968 - 1971	Louisiana State University Law School J.D. degree
Bar:	1971	Louisiana
Experience:	1971 - 1973	State of Louisiana Attorney General's Office Special Counsel
	1973 - 1974	Edwards, Porteous & Amato Partner
	1973 - 1975	District Attorney's Office Parish of Jefferson Chief Felony Complaint Div
	1974 - 1976	Edwards, Porteous & Lee Partner
	1976 - 1980	Porteous, Lee & Mustakas Partner
	1980 - 1984	Porteous & Mustakas Partner
	1982 - 1984	City Attorney's office City of Harahan City Attorney
	1984 - present	24th Judicial District Court State of Louisiana District Judge
Office:	Gretna Courthouse Annex Building Second Floor, Room 200 Gretna, Louisiana 70053 504 364-3850	
Home:	4801 Neyrey Drive Metairie, Louisiana 70002 504 455-5879	
Ethnic Group:	Caucasian	
Salary:	$133,600	

The White House,

19

To the

Senate of the United States.

I nominate G. Thomas Porteous, Jr., of Louisiana,

to be United States District Judge for the Eastern District of

Louisiana vice Robert F. Collins, resigned.

G. THOMAS PORTEOUS, JR.

Birth:	December 15, 1946	New Orleans, Louisiana
Legal Residence:	Louisiana	
Marital Status:	Married	Carmella Giardina Porteous 4 children
Education:	1964 - 1968	Louisiana State University B.A. degree
	1968 - 1971	Louisiana State University Law School J.D. degree
Bar:	1971	Louisiana
Experience:	1971 - 1973	State of Louisiana Attorney General's Office Special Counsel
	1973 - 1974	Edwards, Porteous & Amato Partner
	1973 - 1975	District Attorney's Office Parish of Jefferson Chief Felony Complaint Div
	1974 - 1976	Edwards, Porteous & Lee Partner
	1976 - 1980	Porteous, Lee & Mustakas Partner
	1980 - 1984	Porteous & Mustakas Partner
	1982 - 1984	City Attorney's office City of Harahan City Attorney
	1984 - present	24th Judicial District Court State of Louisiana District Judge

Office: Gretna Courthouse Annex Building
Second Floor, Room 200
Gretna, Louisiana 70053
504 364-3850

To be United States District Judge for the Eastern District of Louisiana

final

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

G. THOMAS PORTEOUS, JR.
QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

Gabriel Thomas Porteous, Jr.

2. Address: List current place of residence and office address(es).

Residence: 4801 Neyrey Drive
Metairie, LA 70002

Office: 24th Judicial District Court
Division "A"
Gretna Courthouse Annex Bldg.
2nd Floor, Room 200
Gretna, LA 70053

3. Date and place of birth.

December 15, 1946 New Orleans, LA

4. Marital status (include maiden name of wife, or husband's name. List spouse's occupation, employer's name and business address(es).

Carmella Ann Giardina Porteous
Vascular Technician
Vascular Laboratory, Inc.
3939 Houma Blvd., Suite 20
Metairie, LA 70006

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Louisiana State University (New Orleans) 1964-1968
Bachelor of Arts - Economics
Degree Awarded: May, 1968

Louisiana State University Law School 1968-1971
Baton Rouge, LA
Juris Doctor
Degree Awarded: May, 1971

6. Employment Record: List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

District Court Judge January 1, 1985 - Present
State of Louisiana
Division A, 24th Judicial District Court

Co-instructor: Loyola School of Law Spring 1990
Civil Procedure Spring 1991

District Court Judge, Ad Hoc August 24, 1984 - January 1, 1985
State of Louisiana
Division A, 24th Judicial District Court

District Attorney's Office Assistant District Attorney
Parish of Jefferson Supervisor:February 1,1975-August 6,1984
District Atty. John Mamoulides Chief Felony Complaint Div.:
Gretna Courthouse Annex Bldg. October 8,1973-January 31,1975
5th Floor
Gretna, LA 70053

St. Mary Dominican College
Instructor: Criminal law and procedure 1982

Porteous & Mustakas 3445 North Causeway Blvd. Metairie, LA 70002	Partner April 1980 - August 1984
City Attorney's Office City of Harahan 6437 Jefferson Hwy. Harahan, LA 70123	City Attorney July 1,1982 - August 23,1984
Porteous, Lee & Mustakas 139 Huey P. Long Ave. Gretna, LA 70053	Partner February 1976 - April 1980
Edwards, Porteous & Lee 139 Huey P. Long Ave. Gretna, LA 70053	Partner August 1974 - January 1976
Edwards, Porteous & Amato 139 Huey P. Long Ave. Gretna, LA 70053	Partner October 1973 - July 1974
Attorney General State of Louisiana P.O.Box 94005 Baton Rouge, LA 70804	Special Counsel September 10, 1971 - October 7, 1973
B & L Associates Dick Barrios 512 Acadia Baton Rouge, LA 70806 (800) 673-0545 (504) 751-4791 Position: Clerk/Assistant	1970 - 1971

Baker Shoe Stores 1968 - 1971
Westside Shopping Center
Gretna, LA 70053
(no longer at that location)
main branch - 837 Canal St.
New Orleans, LA 70112
(504) 524-7904
Position: Shoe Salesman

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

La. State Bar Association
4th & 5th Circuit Judges Association President - 1991
Chief Judge - 24th Judicial district Court - 1992
American Bar Association
Jefferson Bar Association
American Judges Association
American Judicature Society
La. District Attorney's Association President Assistant - 1974
District Attorney Section

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

None.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such membership lapsed. please explain the reason for any lapse of member ship. Give the same information for administrative bodies which require special admission to practice.

All State Courts of Louisiana	September 7, 1971
United States District Court, Eastern District of Louisiana	September 19, 1972
United States Supreme Court	April 18, 1977
United States Court of Appeals, 5th Circuit	October 1, 1981

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you please supply them.

See Attachment "A".

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent - May, 1990.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was first elected without opposition in 1984 for the term to commence January 1, 1985. At the request of the Louisiana Supreme Court, because the Division "A" seat was vacant, I was appointed to sit as the Ad Hoc Judge, effective August 24, 1984. I was re-elected without opposition in 1990 for the term commencing January 1, 1991.

The 24th Judicial District Court is a state trial court of general civil and criminal jurisdiction. However, juvenile proceedings and traffic violations are not included in our jurisdiction. Other specific courts dispose of these two areas.

15. Citations: If you are or have been a judge, provide:

(1) citations for the ten most significant opinions you have written;

(1) David Egudin v. Carriage Court Condominium, et al., 528 So.2d 1043, (La. App 5 Cir., June 1988)
(2) In the Matter of Wrongful Death of Stanton J. Stark, #No. 86-CA-34 (La. App. 5 Cir., June, 1986) (Not designated for publication)

See Attachment "B-1"

(3) Edgar Carlsen v. Mehaffey & Daigle, Inc., et al., 519 So.2d 1187, (La. App. 5 Cir., Jan. 1988); 522 So.2d 1091, (LA 1988)
(4) Paul Fuller v. William Barattini, 574 So.2d 412, (La. App. 5 Cir., Jan.,1991)
(5) Paul Hidding v. Dr. Randall Williams, 578 So.2d 1192, (La. App. 5 Cir., April,1991)
(6) Karen Jewell v. The Bershire Development, 612 So.2d 749, (La. App. 5 Cir. Dec.,1992)
(7) Thuan Ngoc Do v. Phuong Hoang Ngo, et al., 618 So.2d 1213, (La. App. 5 Cir., May,1993)
(8) Betty Ann Dunn v. Kreutziger, D.D.S., et al., 625 So.2d 672, (La. App. 5 Cir., Oct., 1993)
(9) Judy Watts on behalf of minor, Polly Watts v. J.C. Penny et al., App.Ct. # _____, (La. App 5 Cir.,1994)(Not designated for publication)

See Attachment "B-2"

(10) Kenneth Poche and Scott Key v. Bayliner Marine Corporation and Wagner Marine, Inc., 632 So.2d 1170, (La. App. 5 Cir.,Feb.,1994)

(2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

State v. Abadie, 612 So.2d 1 (LA 1993). Defendant made a statement implicating himself in the murder of a seven year old girl, Raquel Fabre. The issue of right to counsel was involved on appeal from ruling that the statement was admissible. The Supreme Court found that defendant sufficiently invoked right to counsel by unsuccessfully attempting to obtain legal advice on telephone, and defendant did not "initiate " or "reopen" interrogation by expressing his possible willingness to talk to particular officer in response to police's chief's request that he submit to lie detector test.

State v. Lindsey, 491 So.2d 371 (LA 1986). LSA-R.S. 14:71 (A)(2) Issuing worthless checks - presumption. The statute provides that a presumption exists, as follows: if an offender fails to pay a check within ten days after notice of its nonpayment, it shall be presumptive evidence of his intent to defraud. Prior rulings by the Supreme Court led me to believe that this presumption would be a mandatory presumption, as opposed to a permissive presumption, hence, unconstitutional. The Supreme Court ruled that the statute was ambiguous as to whether it created a mandatory or permissive presumption; therefore, it is interpreted as constitutional and with lenity toward the defendant. The Court recognized that its holding in this case was in conflict with its prior holdings in State v. Williams, 400 So.2d 575, (LA 1981) and State v. McCoy, 395 So.2d 319 (La. 1980). It explained how those cases could be reconciled and interpreted. My lower court ruling was vacated and the matter remanded.

Yount v. Maisano, 616 So.2d 1382, (La. App. 5 Cir. 1993); 620 So.2d 823 (LA 1993). Jury award against homeowner's policy reversed. Exclusion in policy for bodily injury "expected or intended by the insured." Supreme Court reversed, finding the actions of defendant to be an intentional act and excluded from coverage.

Marshall v. Citicorp Mortgage, Inc., 601 So.2d 669, (La. App. 5 Cir. 1992). Summary judgment reversed finding issue of material facts existed. Issue of decreasing credit life for less than loan balance when combined with rule of '78's in rebating finance charge.

Succession of Ziifle, 595 So.2d 776, (La. App. 5 Cir. 1992). Protracted litigation since 1978. A default judgment, taken before Judge Price, the previous judge of Division A, was found to be a nullity; hence, subsequent judgments were set aside.

Tracy v. Travelers Ins. Companies, 594 So.2d 541, (La. App. 5 Cir 1992) reversed trial court on exclusion of coverage on comprehensive general liability policy.

Wills v. State Farm Auto, 578 So.2d 1006, (La. App. 5 Cir. 1991). Reversed granting of summary judgment on whether insured had offered choice of limits for uninsured motorist coverage and affirmatively selected lower limits.

Kuebler v. Martin, 578 So.2d 113, (LA 1991). This is one of two cases argued before me on the same day. In the first, Autin v. Martin, I granted the defendant's relief on all claims and dismissed plaintiff's claims against the banks. The 5th Circuit Court of Appeals affirmed my decision at 576 So.2d 72, writs were denied by the Louisiana Supreme Court on April 11, 1991.

The second case is the one cited. In that case I granted the bank's motions. Likewise, this was affirmed by the appellate court but reversed by the Supreme Court only as to one of the banks finding the general language in plaintiff's petition did state a cause of action as to that one bank.

American Motorist Ins. Co., 579 So.2d 429, (LA 1991); 566 So.2d 121, (La. App. 5 Cir. 1990). Court of Appeals changed the amount of quantum on portions of the award. Supreme Court reversed the Court of Appeals, in part, and the trial court, in part, on different elements of damage award.

Lutz v. Jefferson Parish School, 565 So.2d 1071, (La. App. 5. Cir 1990); 503 So.2d 106, (La. App. 5 Cir. 1987). Judgment granting reduction in workman compensation payments based upon claimant receiving disability

retirement benefits. Reversed, finding statute was prospective only.

Cabral v. National Fire Ins.Co., 563 So S.2d 533, (La. App. 5 Cir 1990); writ denied, 567 So.2d 1129. Reversed default judgment because insufficient trial record made by plaintiff.

Succession of Austin, 527 So.2d 483, (La. App. 5 Cir. 1988). Foreign will modified by the trial court to reduce the portion that impinged on the legitime. Court of Appeals reversed finding that subsequent birth and legitimation of children revoked the will.

Augustine v. Griffen, 525 So.2d 540, (La. App. 5 Cir. 1988); writ denied, 532 So.2d 118. Twelve-year old on bike hit by auto. I reduced award by 20% for comparative negligence of child. Court of Appeals changed percentage of negligence on child to 80%.

First National Bank v. Verheugen, et al., 527 So.2d 453, (La. App. 5 Cir. 1988); writ denied 530 So.2d 576. Reversed in part on issue of attorney's fees.

Thibodeaux v. Burton, 525 So.2d 1103, (La. App. 5 Cir.1988); 531 So.2d 767, (LA 1989). Plaintiff left a quadriplegic after an auto accident. Pacific Employer Insurance Company failed to answer. Plaintiff obtained default judgment. Court of Appeals upheld default judgment and refusal of new trial. Supreme Court reversed with 3 dissents, finding an incomplete record was made by plaintiff when he confirmed the default.

Southern States Masonry, Inc. v. L.A. Jones Construction Co., et al., 507 So.2d 198, (LA 1987). Granted exception of prematurity. "Pay when paid" clause of contract between contractor and subcontractor.

Cooper v. Brownlow, 491 So.2d 693, (La. App. 5 Cir. 1986). Ruled Levee District was immune from liability under provision of LSA-R.S. 9:2791 and 2795, on a summary judgment. Court of Appeals ruled question of material facts in dispute which precluded summary judgment.

Administration of Tulane Education, 497 So.2d 27, (La. App. 5, 1986). Suit on tuition. Directed verdict for defendant was reversed finding university's

records admissible. Remanded.

Markey v. Howard, 484 So.2d 165, (La. App. 5 Cir. 1986). Jury's assessment of 30% negligence to plaintiff driver was manifestly erroneous. Appellate Court removed this allocation, in all other particulars affirmed.

(3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

State v. Manuel Caballero, 472 So.2d 85, (La. App 5 Cir., June,1985); 492 So.2d 1215
State v. Edward Parr, 498 So.2d 103, (La. App 5 Cir., Nov.,1986); writ denied 532 So.2d 113
State v. Antoinne Williams, 483 So.2d 626, (La. App 5 Cir., Feb.,1986)
State v. Nolan Grant, 517 So.2d 1151, (La. App 5 Cir., Dec.,1987)
State v. Karen Copeland, 631 So.2d 1223, (La. App. 5 Cir., Jan.,1994)
State v. Darrell Williams, 545 So.2d 651, (La. App. 5 Cir.) writ denied 556 So.2d 53 and 584 So.2d 1157
State v. Jessie Head, 598 So.2d 1202, (La. App. 5 Cir., April,1992)
State v. Lane Nelson, 105 S.Ct 2050; 459 So.2d 510; *post conviction relief*
See Attachment "B-3"

16. Public office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Special Counsel, Attorney General — 9/10/71 - 10/7/73
State of Louisiana

Assistant District Attorney — 2/1/73 - 8/6/84
Parish of Jefferson

Both were appointed positions

No unsuccessful candidacies for elective public office

17. Legal career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No.

2. whether you practiced alone, and if so, the addresses and dates;

No.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

District Court Judge — January 1, 1985 - Present
State of Louisiana
Division A, 24th Judicial District Court

Co-instructor: Loyola School of Law — Spring 1990
Civil Procedure — Spring 1991

District Court Judge, Ad Hoc — August 24, 1984 - January 1, 1985
State of Louisiana
Division A, 24th Judicial District Court

Instructor: Criminal law and procedure
St. Mary Dominican College — 1982

District Attorney's Office Parish of Jefferson District Atty. John Mamoulides Gretna Courthouse Annex Bldg., 5th Floor Gretna, LA 70053	Assistant District Attorney Supervisor: 2/1/75 - 8/6/84 Chief Felony Complaint Div.: 10/8/73 - 1/31/75
City Attorney's Office City of Harahan 6437 Jefferson Hwy. Harahan, LA 70123	City Attorney 7/1/82 - 8/23/84
Porteous & Mustakas 3445 North Causeway Blvd. Metairie, LA 70002	Partner April 1980 - August 1984
Porteous, Lee & Mustakas 139 Huey P. Long Ave. Gretna, LA 70053	Partner February 1976 - April 1980
Edwards, Porteous & Lee 139 Huey P. Long Ave. Gretna, LA 70053	Partner August 1974 - January 1976
Edwards, Porteous & Amato 139 Huey P. Long Ave. Gretna, LA 70053	Partner October 1973 - July 1974
Attorney General State of Louisiana P.O. Box 94005 Baton Rouge, LA 70804	Special Counsel 9/10/71 -10/7/73

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

General Civil Practice - in private practice & City Attorney
Criminal Prosecution - Attorney General & District Attorney

2. Describe the typical former clients, and mention the areas, if any, in which you have specialized.

My clients were all individuals until approximately 1975. Subsequently, my practice consisted of corporate representation in areas such as: maritime defense for barge fleeting operations, NLRB appearances, and general corporate representation. Additionally, from 1979 until 1984, I dealt with corporations that developed and operated tank terminal facilities.

As City Attorney, I handled all matters involving the City of Harahan & also prosecuted municipal violations, in the Mayor's Court

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Frequently.

2. What percentage of these appearances was in:
   (a) federal courts - 20%
   (b) state courts of record - 80%
   (c) other courts - 0%

3. What percentage of your litigation was;
   (a) civil - 50%
   (b) criminal - 50%

4. State the number of cases in court of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

350 plus cases - Sole Counsel, 80%; Chief Counsel, 15%; Associate Counsel, 5%.

5. What percentage of these trials were:
   (a) jury 40%
   (b) non-jury 60%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the names of the court and name of the judge or judges before whom the case was litigated; and
(c) the individual names, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Tellepsen Construction Co. et al v. M/S SANTISTA, et al
Civil Action #75-2249, U.S. District Court, Eastern Dist. of Louisiana
Section "C", Honorable Alvin Rubin

This matter was tried for the most part; a settlement was reached during trial and an agreement to dismiss was filed prior to rendition of judgment, August 9, 1976.

Capsule summary of case: Ship collision. I handled this case through all pre-trial discovery and pleadings and participated in all conferences with Judge Alvin Rubin with respect to the case. The dock was constructed by my clients, Tellepsen Construction Company and Lagradeur International. This case was noteworthy because it was major litigation involving issues of negligence, and limitation and remoteness of damage claims.

Final Disposition: Settled to my clients' satisfaction.

G. Thomas Porteous, Jr.
Counsel for Tellepsen Construction Co. & Lagradeur International
(Sole Counsel)

Opposing Counsel:
Terriberry, Carroll, Yancey & Farrell
Walter Carroll, Jr.(retired)
3100 Energy Centre

1100 Poydras St.
New Orleans, LA 70163
(504) 523-6451

2. William E. Cazaubon v. Acme Truck Lines, Inc. and Commercial Union Assurance Company c/w
William E. Cazaubon v. Ocean Chandler Service, Inc., Daniel S. Barrilleaux and Aetna Casualty and Surety Co.
Civil Action # 244-229, 24th Judicial District Court, State of Louisiana Division "A", Judge Roy Price

Trial on the merits, November 22nd & 23rd, 1982

Chief Counsel for Plaintiff: G. Thomas Porteous, Jr.

Capsule summary of case: This matter concerned a suit for personal injuries resulting from an automobile accident. There were significant questions in regard to: causation of the accident; the extent to which plaintiff's injuries were related to the accident; and the amount of future wages that would justly compensate plaintiff. I was associated to try this matter because of my extensive litigation experience. Final Disposition: Judgment for plaintiff.

Co-Counsel:
Don Gardner
6380 Jefferson Hwy.
Harahan, LA 70123
(504) 737-6651

Opposing Counsel:
Rene A. Pastorek
Ste. 1060
3900 N.Causeway Blvd.
Metairie, LA 70002
(504) 831-3747

Wayne T. McGaw
365 Canal Street
Room 1870
New Orleans, LA 70140
(504) 528-2058

3. State of Louisiana v. John J. Storms, III
Criminal # 79-1114, 24th Judicial District Court
Division "M", Judge Robert J. Burns
Citation: 406 So.2d 135, (La. 1981)

Jury Trial, November 26, 27, 28, 29th, 1979.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Count 1 aggravated rape; Count 2, aggravated crimes against nature. This case required the testimony of a ten-year old victim. Case preparation was crucial. This necessitated many visits and meetings with the child in order to gain her trust and confidence which was essential to her trial testimony. When I initially met the victim and her mother, she would not comment. Then, she later made only isolated statements. The child had to be shown the courtroom, where she would be seated and where all the lawyers, defendant and judge would be seated. In advanced preparation for trial, D.A. personnel were placed in the courtroom to simulate the public. Great efforts were made to make the child understand what was about to happen and to make her comfortable and responsive. Final Disposition: Jury Verdict - Guilty as charged; Affirmed.

Trial Assistant for State:
Assistant District Attorney Arthur Lentini
2551 Metairie Road
Metairie, LA 70001
(504) 838-8777

Defense Counsel:
Sam Dalton
2001 Jefferson Hwy.
Jefferson, LA 70121
(504) 835-4289

Co-Defense Counsel:
George Troxell
4330 Canal Street
New Orleans,LA 70119
(504) 488-8800

4. State of Louisiana v. Leonard J. Fagot
Criminal # 76-2116, 24th Judicial District Court
Division "J", Judge Patrick E. Carr
Citation: None, defendant died while out on bond prior to appeal.

Jury Trial, December 12, 13, 14, 15, 16, 19th, 1977.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Second Degree Murder. This was a major case involving a prominent local lawyer; it received a lot of public attention. The case was made more complex because of the health of defendant. Medical support was provided during trial in the event the defendant required treatment. The appearance of defendant on a stretcher invoked the emotions of the jury and it took considerable perseverance to prevent the jury from being swayed by sympathy. My participation was from the inception of this case. This matter required appearances in Federal Court, prior to trial in State District Court, because of defendant's claim of denial of due process based on his state of health. The Federal District Court denied defendant's claim and favorably commended our procedures and precautionary measures.
Final Disposition: Verdict - Guilty as charged; No appeal; defendant alleged to have committed suicide, body found in trunk of car.

Co-Counsel for State:
Assistant District Attorney William Hall
3500 N. Hullen Street

Metairie, LA 70002
(504) 456-8692

Defense Counsels:
Robert Broussard (deceased)
Roy Price (deceased)

5. State of Louisiana v. Jan J. Poretto
Criminal # 80-1980, 81-1003, 24th Judicial District Court
Division "G", Judge Herbert Gautreaux
Citation: 468 So.2d 1142, (La. May,1985); 475 So.2d 314,(La. Sept.,1985)

Jury Trial, November 2, 3, 4, 5, 6th, 1981.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Second Degree Murder and Aggravated Battery. The defendant in this case was a New Orleans policeman. Major question concerning use of certain statements and hypnotic procedures used on the victim/wife by the police. I handled this matter from the initial motion to reduce the bond. This was critical because at this stage we were able to positively connect the defendant with the weapon. Trial preparation was very time consuming because out of state trips were required to secure the presence of a witness. An appearance before a District Court Judge in Annapolis was required to secure the immediate apprehension and transportation of the witness to Louisiana, along with returning this witness to Annapolis.
Final Disposition: Jury Verdict - Guilty as charged; Affirmed.

Co-Counsel for State:
Assistant District Attorney Gordon Konrad
P.O. Box 10890
Jefferson, LA 70181 /or
3900 River Rd., Suite 6
Jefferson, LA 70121
(504) 831-9985

Defense Counsel:
Ralph Whalen
3170 Energy Centre
1100 Poydras Street
New Orleans, LA 70163
(504) 582-2333

6. State of Louisiana v. James Nolen
Criminal # 81-4045, 24th Judicial District Court
Division "J", Judge Jacob Karno
Citation: 461 So.2d 1073 (La. App. 5th Cir 1984)

Jury Trial, August 12, 13, 14, 15th, 1982.

Sole Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Aggravated rape case involved a vicious attack on a young woman. Defense put the victim's credibility at issue because she voluntarily left with the attacker and she was employed as a bartender. Throughout the trial the defendant remained belligerent, this compelled the trial judge to issue warnings. Use of restrains were later necessitated in order to maintain appropriate trial decorum.

Final Disposition: Jury verdict - Guilty as charged; 5th Cir. Ct of Appeals - Affirmed.

Defense Counsel:
Phil Johnson
(inactive) The Louisiana Bar Association reports no current address for this attorney and could only provide the following telephone number:
(714) 275-6066

7. State of Louisiana v. Joseph Batiste
Criminal #71-1081, 24th Judicial District Court
Division "A", Judge Louis DeSonier
Citation: 318 So.2d 27 (LA 1975)

Jury Trial, April 10, 11th, 1972.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Murder. This was the first capital case I tried. The trial involved complex issues of law and fact. Multiple motions to suppress were argued. A photographic line up was suppressed, but the victim's in-court identification was allowed because a sufficient predicate was established to show an independent basis for the identification. Final Disposition: Jury verdict - Guilty of Murder, Death Sentence; Supreme Court - Affirmed conviction, death sentence annulled and set aside per: Furman v. Georgia, 408 U.S. 238; remanded, life imprisonment.

Defense Counsel:
Philip Schoen Brooks
723 Hillary St.
New Orleans, LA 70118
(504) 866-6666

8. State v. Christopher J. Rebstock

Criminal # 82-67, 24th Judicial District Court
Division "A", Judge Roy A. Price
Citation: 413 So.2d 510, (April, 1982); 418 So.2d 1306, (La. Sept 1982)

Motion to Suppress Confession: April 13, 1982.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: 2nd Degree Murder. The case involved a sixteen year old. Issues of law involving the statements he made to police. There were two statements involved. One was an inculpatory statement made to his father. The other was a recorded confession. The Supreme Court held that the boy's arrest was not illegal and the statement obtained as result of the arrest was admissible since the boy and his father had a short private conversation in police station, free from presence of police. A second recorded confession was suppressed because the court found the defendant did not knowingly and intelligently waive his constitutional rights.
Final disposition of case: Defendant pled guilty to manslaughter and received 21 years.

Defense Counsel:
Jacob Amato, Jr.
901 Derbigny Street
Gretna, LA 70053
(504) 367-8181

9. Marlex Terminals, Inc. v. Parish of Jefferson, et al.
Civil Action # 247-364, 24th Judicial District Court, State of Louisiana
Division "A ", Judge Louis G. DeSonier, Jr.

Trial on the summary judgment, December 18, 1980

Sole Counsel: G. Thomas Porteous, Jr.

Capsule summary of case: Petition for mandamus seeking a building permit. Complex litigation involving the rights of the parish government to deprive the applicant of a permit to construct a terminal. The parish government had passed a moratorium on the issuance of permits. The moratorium was challenged on the basis of the parish's failure to properly advertise the notice of the moratorium legislation.
Final Disposition: Mandamus granted. Parish was ordered to issue a permit.

Opposing Counsel:
Alvin J. Dupre, Jr.
Suite A, 2701 Houma Blvd.
Metairie, LA
(504) 454-1061

10. Eppling v. Jon-T Chemical, Inc.
Civil Action # , 24th Judicial District Court, State of Louisiana
Division "B", Judge Zaccaria
Citations: 363 So.2d 1263

Trial on the summary judgment

Sole Counsel: G. Thomas Porteous, Jr. for Defendant

Capsule summary of case: Suit to collect for appraisal fees. Motion for summary judgment on behalf of my client Jon-T Chemicals alleging the doctrine of accord and satisfaction. The case was noteworthy because it was handled in an expedient manner via summary judgment.
Final Disposition: Summary judgment granted; Court of Appeals - Affirmed.

Opposing Counsel:
Thomas Loop
(deceased)

Additionally, the following ten individuals have recently dealt with me on legal matters within the last five years:

Scott W. McQuaig
1500 One Galleria Blvd.
Metairie, LA 70001
(504) 836-5070

Edward J. Rice, Jr.
4500 One Shell Square
New Orleans, LA 70139
(504) 581-3234

Lawrence J. Centola, Jr.
650 Poydras St., Ste. 2100
New Orleans, LA 70130
(504) 523-1385

Raymond A. Pelleteri
1539 Jackson Ave., 6th Floor
New Orleans, LA 70130
(504) 561-5000

Jay Zainey
2543 Metairie Road
Metairie, LA 70001
(504) 831-6766

Robert Glass
530 Natchez Street
New Orleans, LA 70130
(504) 581-9083

Patricia LeBlanc
1615 Metairie Road
Metairie, LA 70005
(504) 834-2612

Kathryn T. Wiedorn
3421 N. Causeway Blvd., 9th Floor
Metairie, LA 70002
(504) 831-4091

Allan Berger
4173 Canal Street
New Orleans, LA 70119
(504) 486-9481

Joseph R. McMahon, Jr.
111 Veterans Blvd.
Heritage Plaza, Ste. 740
Metairie, LA 70005
(504) 837-1844

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

State v. Lane Nelson, This matter was before me on defendant's application for post conviction relief. Defendant was earlier found guilty, by a prior court, of first degree murder and sentenced to death. I set aside the death penalty because of ineffective assistance of counsel. Defendant subsequently pled guilty to first degree and he was resentence to life in prison, without

capital punishment. (Attachment "B-3")

Marlex Terminal, Inc. v. Parish of Jefferson, et al., Civil Action # 247-364, 24th J.D.C., State of Louisiana, Division "A", Judge Louis G. DeSonier,Jr.

The brief represents my sole personal work. Trial on the summary judgment, December 18, 1980. Sole Counsel: G. Thomas Porteous, Jr.

Capsule summary of case: Petition for mandamus seeking a building permit. Complex litigation involving the rights of the parish government to deprive the applicant of a permit to construct a terminal. The parish government had passed a moratorium on the issuance of permits. The moratorium was challenged on the basis of the parish's failure to properly advertise the notice of the moratorium legislation.
Final Disposition: Mandamus granted. Parish was ordered to issue a permit.

Instructor: Criminal Law/Criminal Procedure
For three years, I taught at St. Mary Dominican College. The class was a required course in the Criminal Justice program.

Co-instructor: Civil Procedure.
In conjunction with another attorney, I volunteered my time to teach third-year law students at Loyola School of Law. The emphasis was not only on the written and codified law, but also on the practical application of the law during trial proceedings. I taught the course during the Spring term in 1990 and 1991.

Speaker - Continuing Legal Education. I appeared as a speaker for numerous CLE programs, such as: the Jefferson Bar Association, Louisiana Judicial College and Louisiana State Bar Association Summer School for Lawyers

District Court Judge
State of Louisiana
Division A, 24th Judicial District Court

District Court Judge, Ad Hoc
State of Louisiana
Division A, 24th Judicial District Court

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Louisiana State Employee Retirement System. If I am appointed prior to the end of my term, i.e., December 31, 1996, the benefits can only be drawn when I attain age 60.

2. Explain how you will resolve any potential conflict of interest, including the procedures you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will follow the mandates of the Federal Rules of Civil & Criminal Procedure. I will also follow the guidelines of the Code of Judicial Conduct. I will also consider the model codes and recommendation of the ABA which are pertinent.

The only possible areas of conflict of interest would be reviewing cases from Louisiana State Court, 24th Judicial District Court, Division A, during the time I sat or a challenge to the Louisiana State Employee Retirement System. As to the retirement, a conflict could arise only if I remained on the Jefferson bench twelve (12) years, until 1996. If I took the Federal bench prior to this point, I would not be eligible for retirement proceeds until age sixty (60).

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Attachment "C"

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See Attachment "D"

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Only the campaign wherein I was elected District Court Judge.

III. GENERAL (PUBLIC)

1. An ethical consideration under Cannon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Speaker - Continuing Legal Education. I appear as a speaker for numerous

CLE programs, such as: the Jefferson Bar Association, Louisiana Judicial College and Louisiana State Bar Association Summer School for Lawyers

Since I took the bench, I invited field trips to Division "A", 24th J.D.C. for school children about once a month. The students would observe the docket and I then speak with them on the working of the court system. Afterwards, I entertain questions to explain either the particular case or the function of the courts.

I have also visited many schools in Orleans and Jefferson Parish to speak on the court systems, the functions and the duties of a judge.

Judging Moot Court Competitions on numerous occasions at Tulane School of Law and Loyola Law School.

I recently participated in the National Institute of Trial Advocacy program at Louisiana State University School of Law

At Loyola School of Law, I volunteered as co-instructor for Civil Procedure for two terms.

To serve the community, since 1978, I continue to be active with the Recreation Department for the Parish of Jefferson in coaching and refereeing.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your

nomination?

No.

Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Initially, I met with Senator John Breaux to discuss the possibility of being recommended for the federal bench. Both Senators Breaux and Johnston sent my name to the White House and I was recommended.

After completing multiple questionnaires, I was interviewed in Washington by members of the Justice Department, Office of Policy Development.

The FBI and the ABA have also conducted extensive reviews of my credentials and qualifications, along with conducting interviews.

On August 25, 1994, I was officially nominated by the President for the United States District Court, Eastern District of Louisiana.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Our country, with its three separate and distinct branches of government, has withstood the test of time and the criticism of some. Even though the branches are separate, there will always be occasions when there is interaction among them while still preserving the separation of powers.

We, in the judiciary, have a duty to listen to the facts of a case and render a decision according to law pertinent to those issues. The presentation of the facts are for the litigants and we should always guard against participating in that presentation. A trier of fact should in no way devise, invent or concoct facts; it should rule on the case before it. Unless a question is certified before the court by the Louisiana Supreme Court or any other tribunal properly, it may not render an advisory opinion. Novel questions of law occasionally arise, and they must be dealt with according to the facts before the court. The judiciary must decide cases according to the facts and law as an impartial arbitrator.

In performing our duties there are occasions when our judgments may

be interpreted as judicial activism. When we declare a law unconstitutional and unenforceable that may be interpreted by some as interfering with the legislative function. However, such action is part of our duty and responsibility and is far different from actually legislating.

When we deal with individual grievances, we must be ever mindful to follow judicial precedent and constitutional interpretation. The personal feelings of a judge should never replace sound, established judicial precedent and constitutional interpretation. In instructing juries, I always remind them that "your decision must not be based on bias, prejudice, sympathy or public opinion." We in the judiciary must be ever mindful of this guideline when we are the trier of the facts.

Once a matter is before a court on a trial on the merits, the judiciary's duty is to render our decision solely based on the law and evidence. Prior to trial, a judge may be called upon to counsel or intervene as an unbiased peacemaker, encouraging the parties to be open minded and understanding.

If we attempt to go beyond our role, we may in fact infringe on areas reserved to the other branches of government. If we attempt to do less, we will not be adhering to our oaths and weakening the judicial branch of government. It is always a careful balance.

IV CONFIDENTIAL

1. Full name (include names used).

   Gabriel Thomas Porteous, Jr.

2. Address: List current place of residence and office address(es). List all office and home telephone numbers where you may be reached.

Residence:	4801 Neyrey Drive Metairie, LA 70002	(504) 455-5879
Office:	Division "A" Gretna Courthouse Annex Bldg. 2nd floor, Room 200 Gretna, LA 70053	(504) 364-3850

3. Have you ever been discharged from employment for any reason or have you ever resigned after being informed that your employer intended to discharge you?

   No.

4. Were all your taxes (federal, state, and local) current (filed and paid) as of the date of your nomination?

   Yes.

5. Has a tax lien or other collection procedure (to include receipt of computer balance due notices) ever been instituted against you by federal, state, or local authorities? If so, give full details.

   No.

6. Have you or your spouse ever been the subject of any audit, investigation or inquiry for either federal, state, or local taxes? If so, give full details.

   No.

7. Have you or your spouse ever declared bankruptcy? If so, give particulars.

No.

8. Have you to your knowledge ever been under federal, state, or local investigation for a possible violation of either a civil or criminal statute or administrative agency regulation? If so, give full details. Has any organization of which you were an officer, director, or active participant ever been the subject of such an investigation with respect to activities within your responsibility? If so, give full details.

No.

9. Have you ever been the subject of a complaint to any court, administrative agency, bar association, disciplinary committee, or other professional group for a breach of ethics, unprofessional conduct or a violation of any rule of practice? If so, give particulars.

No.

10. Have you ever been sued by a client or other party? Have you ever been a party to any litigation? If so, give full particulars.

Clark, et al v. Edwards, et al.
86-435, U.S. District Court, Eastern District of Louisiana

Suit challenging the method of election of judges in Louisiana. All judges were sued as nominal parties; we were sued in our official capacity. Resolution: Jefferson Parish, the 24th Judicial District Court, established sub-districts wherein an individual candidate runs, as opposed to running throughout the entire parish as was previously the procedure.

24th Judicial District Court, Indigent Defender Board & Sam Dalton v. State of Louisiana, Governor Roemer, et al.
413-728, 24th Judicial District Court
Declaratory judgment on constitutionality of LSA-R.S. 15:144(B)(D). All judges were sued, we were sued in our official capacity.

Resolution: Supreme Court issued a TRO and remanded to lower court. At the request of the Chief Justice and all interested parties, we have deferred further proceedings pending resolution by the legislature. The Indigent Defender Board has stated that they will voluntarily dismiss this suit within the next 30 days.

Augustus, et al. v. State of Louisiana, Governor Roemer, et al
#90-4667 U. S. District Court, Eastern District of Louisiana

Constitutionality of LSA-R.S. 13:994(B)(1),(2),(3). This concerned a Louisiana statute which assessed a 2% fee on bail bonds. All judges were sued as nominal parties in their official capacity. This is virtually the same claim as Sierra, et al v. State of Louisiana, Governor Roemer, et al, except it was filed in Federal court.

Injunction granted, statute declared unconstitutional.

Sierra, et al v. State of Louisiana, Governor Roemer, et al
#405-429, 24th Judicial District Court
All judges were sued as nominal parties in their official capacity. Constitutionality of LSA-R.S. 13:994(B)(1),(2),(3). Post Augustus ruling, parties petitioned in state court for refunds of the fees collected to date. Refunds denied by the trial and appellate courts. The Louisiana Supreme Court denied plaintiffs' writs on June 24, 1994.

DeGrange, et al v. 24th Judicial District Court
89-3535, U.S. District Court, Eastern District of Louisiana

All judges were sued in their official and individual capacity. Petitioners, Shurmaine DeGrange and Ida Williams alleged discrimination. Both petitioners were former employees of the late Judge Lionel Collins. After his death, De Grange, his former law clerk, alleged she was not hired as a hearing officer in Domestic Court because of discrimination. Ida Williams, his former secretary, alleged discrimination because her services were not retained by the newly elected judge of the division.

Resolution: The matter was settled without any admission of liability or responsibility.

11. Please advise the Committee of any unfavorable information that may affect your nomination.

To the best of my knowledge, I do not know of any unfavorable information that may affect my nomination.

AFFIDAVIT

I, Gabriel Thomas Porteous, Jr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Gretna, Louisiana this 6 day of September, 1994.

Gabriel Thomas Porteous, Jr.

Notary

AO-19
Rev. 1/93

FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics in Government Act of 1978, as amended, Title I, Public Laws 101-194, November 30, 1989 (5 U.S.C.A. App. [redacted])

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Porteous (Jr.), Gabriel T.	United States District Court Eastern District of Louisiana	8-29-94
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)	**5. Report Type** (check appropriate type) X Nomination, Date 8-25-94 ___ Initial ___ Annual ___ Final	**6. Reporting Period**
United States District Court Judge		1-1-93 - 8-25-94
7. Chambers or Office Address Division A, 24th Judicial District Ct. Gretna Courthouse - Annex Bldg. Gretna, Louisiana 70053	**8.** On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations ___ Reviewing Officer Signature _____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed.* Complete all parts, checking the NONE box for each section where you have no reportable information. *Sign on last page.*

POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION	NAME OF ORGANIZATION/ENTITY
X NONE (No reportable positions)	

AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATE	PARTIES AND TERMS
X NONE (No reportable agreements)	

I. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
	NONE (No reportable non-investment income)	
	1994 Year to Date Judicial State of Louisiana	$ 49,206.00
	Vascular Laboratory, Inc. (S)	$
	1993 Judicial State of Louisiana	$ 72,830.58
	Southern Baptist Hospital (Final balance of annuity, retirement, of my deceased mother)	$ 381.39
	Vascular Laboratory, Inc. (S) (See Attachment I)	$

ATTACHMENT I

FINANCIAL DISCLOSURE REPORT (cont'd) PORTEOUS (JR.), Gabriel T. 8-29-94

III. NON-INVESTMENT INCOME

1992 Judicial State of Louisiana	$74,384.26
Southern Baptist Hospital (Retirement annuity deceased mother)	1,652.64
Executive Life Insurance of California (Retirement annuity deceased mother)	3,287.40

Vascular Laboratory, Inc. (S)

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Porteous (Jr.), Gabriel T.	8-29-94

IV. REIMBURSEMENTS and GIFTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements or gifts)	
1	Exempt	
2		
3		
4		
5		
6		
7		
8		

V. OTHER GIFTS.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts)		
1	Exempt		$
2			$
3			$
4			$

VI. LIABILITIES.

(Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
X	NONE (No reportable liabilities)		
1			
2			
3			
4			
5			
6			
7			

FINANCIAL DISCLOSURE REPORT (cont'd)	Name of Person Reporting Porteous (Jr.), Gabriel T.	Date of Report 8-29-94

I. INVESTMENTS and TRUSTS – income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

A. Description of Assets (including trust assets) Indicate, where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amt. Code[1] (A-H)	(2) Type (e.g., div. rent or int.)	(1) Value Code[2] (J-P)	(2) Value Method Code[3] (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code[2] (J-P)	(4) Gain Code[1] (A-H)	(5) Identity of buyer/seller (if private transaction)
[X] NONE (No reportable income, assets, or transactions)									
1									
2									
3									
4									
5									
6									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									

1 Income/Gain Codes: (See Col. B1 & D4)	A=$1,000 or less E=$15,001 to $50,000	B=$1,001 to $2,500 F=$50,001 to $100,000	C=$2,501 to $5,000 G=$100,001 to $1,000,000	D=$5,001 to $15,000 H=More than $1,000,000
2 Value Codes: (See Col. C1 & D3)	J=$15,000 or less N=$250,001 to $500,000	K=$15,001 to $50,000 O=$500,001 to $1,000,000	L=$50,001 to $100,000 P=More than $1,000,000	M=$100,001 to $250,000
3 Value Method Codes: (See Col. C2)	Q=Appraisal U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market

PORT000000054

FINANCIAL DISCLOSURE REPORT (cont'd)	Name of Person Reporting	Date of Report
	Porteous (Jr.), Gabriel T.	8-29-94

VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

IX. CERTIFICATION.

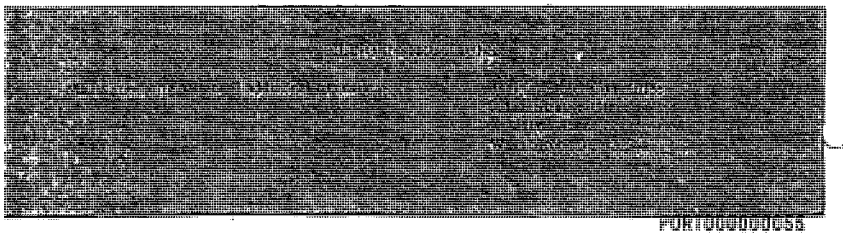
In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature _____ Date September 6, 1994

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)



IT NATIONAL BANK OF COMMERCE
(...EINAFTER REFERRED TO AS "BANK")
P. O. BOX 60279
210 BARONNE STREET
NEW ORLEANS, LOUISIANA 70160

PERSONAL FINANCIAL STATEMENT

NOTICE - This statement is designed for use by residents of Louisiana or another community property state. Reflect in this statement only your own financial condition. List all of your separate assets and any community property or income in which you have an interest, as well as all debts which may be satisfied out of either your separate or community property. If you are seeking credit jointly with your spouse and your spouse has separate community property and/or income, your spouse should submit a separate Personal Financial Statement and attach it to yours.

FOR BANK USE ONLY: OFFICER _____ CL# _____ CL# _____ IL# _____

Please do not leave any questions unanswered. Mark N/A ("Not Applicable") in any space which would otherwise be left blank.

INDIVIDUAL INFORMATION

Name Gabriel Thomas Porteous, Jr.	Employer Name Judicial Branch, State of Louisiana
Address 4801 Neyrey Drive	Employer Address 301 Loyola Avenue
City, State & Zip Metairie, Louisiana 70002	City, State & Zip New Orleans, Louisiana 70112
Date of Birth 12-15-46	Years with Present Employer 10
Social Security # [redacted]	Position or Occupation Judge
Residential Phone (504) 455-5879	Business Phone (504) 364-3850

STATEMENT OF FINANCIAL CONDITION AS OF April 26 ,1994

ASSETS (Do not include assets of questionable value)	In Dollars (omit cents)	LIABILITIES	In Dollars (omit cents)
Cash - (See Schedule 1)		Notes Payable - (See Schedule 8)	
Cash In This Institution	1,500	Notes Payable to This Institution - Secured	
Cash In Other Institutions	1,700	Notes Payable to This Institution - Unsecured	3,614
U.S. Gov't & Marketable Securities - (See Schedule 2)		Other Notes Payable - Secured	
U.S. Gov't Securities		Other Notes Payable - Unsecured	
Money Market Funds and Mutual Funds		Automobile Loans	
Listed Securities (NYSE, ASE, OTC)		Loans Against Margin Accounts - (See Schedule 2)	
Closely Held or Not Actively Traded Securities - (See Schedule 2)		Life Insurance Policy Loans - (See Schedule 3)	2,000
		Real Estate Mortgages Payable - (See Schedule 5)	
...n Surrender Value - Life Insurance Policies - (See Schedule 3)	5,000	Personal Residence	94,000
		Other Wholly Owned Real Estate	
IRA's, Keoghs, Profit Sharing & Other Vested Retirement Accounts - (See Schedule 4)	92,408	Partially Owned Real Estate	
		Oil and Gas Liabilities - (See Schedule 7)	
Real Estate - (See Schedule 5)		Credit Card Accounts and Bills Due	37,853
Personal Residence	225,000	Loans Due to Partnerships	
Other Wholly Owned Real Estate		Unpaid Income Tax	
Partially Owned Real Estate		Other Unpaid Taxes and Interest	
Real Estate Mortgages Owned - (See Schedule 6)		Estimated Tax Liability on Assets if Liquidated	
Accounts Receivable & Notes Receivable - (See Schedule 6)		Other Debts - Itemize below	
Oil and Gas Interests - (See Schedule 7)			
Deferred Income			
Automobiles	15,000		
Other Assets:			
Personal Property	25,000		
Partnership Interests			
		Total Liabilities	137,467
		Net Worth	228,141
Total Assets	365,608	Total Liabilities and Net Worth	365,608

GENERAL INFORMATION

Number of Dependents (not including Spouse): 4 Ages: 23, 21, 19, 13 Marital Status: ☒ Married ☐ Unmarried ☐ Separated

Spouse Information:

...ame Carmella Giardina Porteous

Address (if different from applicant) _____

Employer Name Vascular Laboratory, Inc. Position or Occupation Technician

Employer Address 4320 Houma Blvd., Metairie, Louisiana 70006

Social Security # [redacted] Date of Birth 12-23-48 Business Phone (504) 456-5536

If married and domiciled in Louisiana, have you and your spouse executed a contract which varies the legal (Community Property) regime?
☐ Yes ☒ No If "Yes", attach a copy of such contract.

PORT000000056

CHEDULE 4 - IRAs, Keoghs, Profit Sharing & Other Vested Retirement Accounts - If not enough space, please attach separate schedule.

TRUSTEE OR PLAN ADMINISTRATOR	IN THE NAME OF	TYPE OF ACCOUNT	BENEFICIARY	MARKET VALUE	AMOUNT OF PLAN LOANS	MARKET VALUE LESS PLAN LOANS	ACCESS DATE
tate of La.	G. Thomas	Ret.	Carmella Porteous	92,408	0	0	12/15/06
mployees	Porteous, Jr						or
etirement							Separation
ystem							from servic
						Total	

CHEDULE 5 - Real Estate Owned - If not enough space, please attach separate schedule.

ADDRESS & TYPE OF PROPERTY	% OWNED	TITLE IN NAME OF	YR. ACQ'D	COST & IMPRVMTS	PRESENT MARKET VALUE	MORTGAGE BALANCE	LENDER	LOAN MATURITY	ANNUAL LOAN PMT. AMT.	GROSS ANNUAL INCOME	ANNUAL OPER. EXP. (not incl. loan)
ERSONAL RESIDENCE											
801 Neyrey Dr.		Mr. & Mrs.	77								
etairie, La.	100	G.T. Porteous,	Jr.	105,000	225,000	94,000	Fidelity	9/2008	9981.84		
HER WHOLLY OWNED REAL ESTATE (Residential or Commercial)											
RTIALLY OWNED REAL ESTATE											
				Totals					Totals		
				Your Portion of Market Value and Debt					Your Portion of Income & Expenses		

HEDULE 6 - Accounts Receivable, Mortgage Receivable & Notes Receivable - If not enough space, please attach separate schedule.

DUE FROM	ORIGINAL AMOUNT	PRESENT BALANCE	INT. RATE	MATURITY	PAYMENT TERMS	ARE PMTS. CURRENT?	COLLATERAL
	Total						

HEDULE 7 - Oil and Gas Interests (Including General Partnership Interests) - If not enough space, please attach separate schedule.

FIELD NAME, ARISH / COUNTY & STATE	TYPE OF INTEREST	SOURCE OF VALUATION	VALUATION AMT / DATE	PRESENT LOAN BAL.	LENDER	ANNUAL PMT. AMOUNT	GROSS ANNUAL INCOME	ANNUAL CASH OPER. EXP.
			Totals			Totals		

HEDULE 8 - Notes Payable (Including all loans, active lines of credit and inactive lines of credit.) - If not enough space, please attach separate schedule.

ME OF CREDITOR	TYPE OF FACILITY (Loan or Line)	ORIGINAL LOAN OR LINE AMOUNT	UNPAID BALANCE	INTEREST RATE	MATURITY DATE	UNSECURED OR SECURED (List Collateral)	ACCOUNT NUMBER
rst NBC	Loan	3,614	3,614	6	*	unsecured	[redacted]
		Total	3,614				PORT000000057

U.S. Department of Justice

Office of Policy Development

Assistant Attorney General

Washington, D.C. 20530

August 25, 1994

PERSONAL AND CONFIDENTIAL

Honorable G. Thomas Porteous
Gretna Courthouse Annex Building
2nd Floor, Room 200
Gretna, Louisiana 70053

Dear Judge Porteous:

In connection with your candidacy for appointment to the United States District Court for the District of Idaho, you will be required to file a "Financial Disclosure Report" as required by the Ethics Reform Act of 1989 within five days of your name being submitted to the United States Senate for confirmation consideration.

Please review and comply with the enclosed material. Because of the short filing requirement, you may wish to complete the form in draft at this time (do not send to us). Also you should note that the information on the form may not be older than thirty days from the date of nomination. You will be notified by telephone when the five days begins to run.

If you have any questions concerning this procedure, please call Sheila Joy at 202 514-1607.

Sincerely yours,

Eleanor Dean Acheson
Assistant to the Attorney General

AMERICAN BAR ASSOCIATION Standing Committee on Federal Judiciary

Reply to: Williams & Connolly
725 12th St., N.W.
Washington, D.C. 20005
(202) 434-5151

June 29, 1994

CONFIDENTIAL

Eleanor Dean Acheson, Esquire
Assistant Attorney General
Office of Policy Development
United States Department of Justice
Room 4234
Washington, D.C. 20530

RE: HONORABLE G. THOMAS PORTEOUS, JR.
United States District Court
Eastern District of Louisiana

Dear Eleanor:

Thank you for your letter of June 28, 1994 regarding the Honorable G. Thomas Porteous, Jr.

I have also received a copy of your letter to Judge Porteous requesting him to forward a copy of his Personal Data Questionnaire responses to me and Sylvia H. Walbolt, Esq.

I have written to Judge Porteous and Mrs. Walbolt. Copies of those letters are enclosed.

Sincerely yours,

Robert P. Watkins

Robert P. Watkins
Chair

Enclosures

cc: Sylvia H. Walbolt, Esq.

AMERICAN BAR ASSOCIATION Standing Committee on Federal Judiciary

Reply to: Williams & Connolly
725 12th St., N.W.
Washington, D.C. 20005
(202) 434-5151

June 29, 1994

CONFIDENTIAL

Honorable G. Thomas Porteous, Jr.
Judicial Department of Louisiana
Gretna Courthouse-Annex Building
Gretna, LA 70053

Dear Judge Porteous:

Eleanor Dean Acheson, Assistant Attorney General, sent me a copy of her June 28, 1994 letter to you requesting that you transmit copies of your responses to the Personal Data Questionnaire to me and to Sylvia H. Walbolt, Esquire, who will be conducting the investigation. Receipt of this document is the starting point for the investigation.

Enclosed is a copy of the Committee's brochure, "Standing Committee on Federal Judiciary--What It Is and How It Works," as amended, for your information.

If you have any questions about this process, please feel free to call me at (202) 434-5151.

We look forward to receipt of your responses.

Sincerely yours,

Robert P. Watkins
Chair

Enclosure

cc: Eleanor Dean Acheson, Esq.
Sylvia H. Walbolt, Esq.

PORT000000060

AMERICAN BAR ASSOCIATION Standing Committee on Federal Judiciary

Reply to: Williams & Connolly
725 12th St., N.W.
Washington, D.C. 20005
(202) 434-5151

June 29, 1994

CONFIDENTIAL

Sylvia H. Walbolt, Esq.
Carlton, Fields, Ward, Emmanuel,
Smith & Cutler, P.A.
Barnett Tower, Suite 2300
One Progress Plaza
St. Petersburg, FL 33701

RE: HONORABLE G. THOMAS PORTEOUS, JR.
United States District Court
Eastern District of Louisiana

Dear Sylvia:

You will have received copies of Eleanor Dean Acheson's letters of June 28, 1994 to me and Judge Porteous in connection with his candidacy for appointment to the United States District Court for the Eastern District of Louisiana.

I have written to Judge Porteous as per the enclosed letter, pointing out that our investigation will not begin until we receive his responses to the Personal Data Questionnaire.

After receipt of Judge Porteous' responses, please make your usual inquiries and proceed in the usual manner.

Sincerely yours,

Robert P. Watkins

Robert P. Watkins
Chair

Enclosure
cc: Eleanor Dean Acheson, Esq.

PORT000000061

AMERICAN BAR ASSOCIATION Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIR
William E. Willis
125 Broad Street
28th Floor
New York, NY 10004-2498
FIRST CIRCUIT
Michael S. Greco
19th Floor
One International Place
100 Oliver Street
Boston, MA 02110
SECOND CIRCUIT
Arnold I. Burns
23rd Floor
1585 Broadway
New York, NY 10036
THIRD CIRCUIT
Victor F. Battaglia, Sr.
1800 Mellon Bank Center
Tenth and Market Streets
Wilmington, DE 19801
FOURTH CIRCUIT
J. Hardin Marion
26th Floor
100 East Pratt Street
Baltimore, MD 21202
FIFTH CIRCUIT
Pike Powers, Jr.
2400 One American Center
600 Congress Avenue
Austin, TX 78701
SIXTH CIRCUIT
Charles E. English
1101 College Street
Bowling Green, KY 42102-0770
SEVENTH CIRCUIT
Thomas Z. Hayward, Jr.
Suite3200
70 West Madison Street
Chicago, IL 60602-4207
EIGHTH CIRCUIT
James E. McDaniel
714 Locust Street
St. Louis, MO 63101
NINTH CIRCUIT
Lambhard G. Howell
Arctic Building Penthouse
700 Third Avenue
Seattle, WA 98104
Richard M. Macias
624 South Grand Avenue
Los Angeles, CA 90017
TENTH CIRCUIT
Mona S. Lambird
500 West Main
Oklahoma City, OK 73102-2275
ELEVENTH CIRCUIT
Sylvia H. Walbolt
Barnett Tower, Suite 2300
One Progress Plaza
St. Petersburg, FL 33701
DISTRICT OF COLUMBIA CIRCUIT
Carolyn B. Lamm
Suite 500
1747 Pennsylvania Avenue, N.W.
Washington, DC 20006-4604
FEDERAL CIRCUIT
Mortimer M. Caplin
Suite 1100
One Thomas Circle, N.W.
Washington, DC 20005
BOARD OF GOVERNORS LIAISON
R. William Ide III
One Peachtree Center
303 Peachtree Street
Atlanta, GA 30308
STAFF LIAISON
Irene K. Emsellem
American Bar Association
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CONFIDENTIAL August 30, 1994

Hon. Eleanor Dean Acheson
Assistant Attorney General
United States Department of Justice
Office of the Attorney General
Room 5131
Washington, D.C. 20530

RE: HONORABLE G. THOMAS PORTEOUS, JR.
United States District Court
Eastern District of Louisiana

Dear Eldie:

As a result of our investigation our Committee is unanimously of the opinion that Honorable G. Thomas Porteous, Jr. is Qualified for appointment as Judge of the United States District Court, Eastern Districtof Louisiana.

Sincerely,

Bill

William E. Willis
Chair

cc: All Committee Members

AMERICAN BAR ASSOCIATION Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CONFIDENTIAL August 30, 1994

Committee on the Judiciary
ATT: Hon. Joseph R. Biden, Jr., Chairman
224 Dirksen Senate Office Bldg.
Washington, D.C. 20510-6275

RE: HONORABLE G. THOMAS PORTEOUS, JR.
United States District Court
Eastern District of Louisiana

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Honorable G. Thomas Porteous, Jr. for appointment as Judge of the United States District Court, Eastern District of Louisiana.

Our Committee is unanimously of the opinion that Judge Porteous is Qualified for this appointment.

A copy of this letter has been sent to Judge Porteous for his information.

Sincerely,

Bill Willis

William E. Willis
Chair

cc: Honorable G. Thomas Porteous, Jr.
All ABA Judiciary Committee Members
Hon. Eleanor Dean Acheson

AMERICAN BAR ASSOCIATION Standing Committee on Federal Judiciary
1600 M Street, NW
Washington, DC 20036
(202) 331-2210

CONFIDENTIAL

August 30, 1994

Honorable G. Thomas Porteous, Jr.
24th Judicial District Court
Division "A"
Gretna Courthouse Annex Bldg.
Second Floor, Room 200
Gretna, LA 70053

Dear Judge Porteous:

Congratulations on your nomination for appointment as Judge of the United States District Court, Eastern District of Louisiana.

At the invitation of the United States Senate Committee on the Judiciary, we have today sent a letter to them reporting on our evaluation of your qualifications. A copy of this letter is enclosed for your information.

Sincerely,

William E. Willis
Chair

(Enclosure)

cc: All ABA Judiciary Committee Members
Hon. Eleanor Dean Acheson

PORT000000064

U. S. Department of Justice

Executive Secretariat

Washington, D.C. 20530

6/28/94

TO: Sylvia Walbolt, Esq.
Carlton, Fields, Ward, Emmanuel,
Smith & Cutler, P.A.

FM: Sheila Joy
Staff Assistant, Judicial Appointments

RE: G. Thomas Porteous, Jr.

Judge Porteous is away on a cruise. Mr. Watkins' office has indicated you would like to have some information regarding Judge Porteous so you could begin work on his evaluation immediately.

The following is a DRAFT of Judge Porteous' Personal Data Questionnaire (without attachments). He will be back in his office next week and will send you a final copy with attachments.

I will be in my office tomorrow, if you need anything further. My telephone number is 202 514-1607.

U. S. Department of Justice
Office of Policy Development

Washington, D.C. 20530

June 28, 1994

Robert P. Watkins, Esq.
Williams & Connolly
725 12th Street, N.W.
Washington, D.C. 20005

Dear Mr. Watkins:

We would appreciate having the formal report of the ABA Standing Committee on Federal Judiciary on G. Thomas Porteous, Jr., who is under consideration for appointment as United States District Judge for the Eastern District of Louisiana.

To facilitate the Committee's evaluation, we have asked Judge Porteous to forward his response to the Personal Data Questionnaire to you and to the Circuit representative of the Committee.

Sincerely yours,

Eleanor D. Acheson
Assistant Attorney General

cc: Sylvia H. Walbolt, Esq.

U. S. Department of Justice

Office of Policy Development

Washington, D.C. 20530

June 28, 1994

PERSONAL AND CONFIDENTIAL

The Honorable G. Thomas Porteous, Jr.
Judicial Department of Louisiana
Gretna Courthouse-Annex Building
Gretna, Louisiana 70053

Dear Mr. Porteous:

In connection with your candidacy for appointment to the United States District Court for the Eastern District of Louisiana, we have requested a formal report from the ABA Standing Committee on Federal Judiciary.

In order to facilitate the ABA Committee's evaluation, please send the information provided in your response to the Personal Data Questionnaire to both the Chairman and the Circuit representative of the Committee, whose names and addresses, respectively, are as follows:

Robert P. Watkins, Esq.
Williams & Connolly
725 12th Street, N.W.
Washington, D.C. 20005

Sylvia H. Walbolt, Esq.
Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A.
Barnett Tower, Suite 2300
One Pregress Plaza
St. Petersburg, Florida 33701

If you have any questions concerning this procedure, please call Sheila Joy at 202 514-1607.

Sincerely yours,

Eleanor D. Acheson
Assistant Attorney General

cc: Robert P. Watkins, Esq.
Sylvia H. Walbolt, Esq.

AMERICAN BAR ASSOCIATION Standing Committee on Federal Judiciary

Reply to: Williams & Connolly
725 12th St., N.W.
Washington, D.C. 20005
(202) 434-5151

July 7, 1994

CONFIDENTIAL

Honorable G. Thomas Porteous, Jr.
24th Judicial District Court
Division "A"
Gretna Courthouse Annex Building
Second Floor, Room 200
Gretna, LA 70053

Dear Judge Porteous:

Thank you for your letter of July 5, 1994 and the copy of your responses to the Personal Data Questionnaire.

I understand that you have also sent a copy of your responses to Sylvia H. Walbolt, Esquire, who will be conducting the investigation.

Mr. Walbolt will contact you in due course.

Sincerely yours,

Robert P. Watkins

Robert P. Watkins
Chair

cc: Eleanor Dean Acheson, Esq.
Sylvia H. Walbolt, Esq.

SENT BY:Xerox Telecopier 7020 ; 3-22-94 ; 14:29 ; 2024568423→ 95142424;# 3
03-22-94 10:54AM TO 94561047 P003/004

HONORABLE G. THOMAS PORTEOUS
4801 NEYREY DRIVE
METAIRIE, LA 70002
(504) 455-5878
(504) 364-3850

JUDICIAL AND LEGAL EXPERIENCE:

January 1992 - Present	Chief Judge of the 24th Judicial District Court
August 1984 - Present	Judge of the 24th Judicial District Court, Division "A" Parish of Jefferson
January 1973 - 1984	Assistant District Attorney Parish of Jefferson 1976 to 1984, Felony Supervisor - in charge of major felony prosecutions; more notably, State v. Poretto, State v. Fagot 1973-1974 Chief Felony Complaint Division
January 1971 - 1973	Louisiana Department of Justice Special Counsel, assigned to Criminal Division; tried felony cases in Jefferson Parish, Caddo Parish and Lafourche Parish. Assigned to Louisiana Supreme Court, responsible for all appeals and Writs of Habeas Corpus
1973 - Present	Guest lecturer and speaker. Judge, Loyola Moot Court Competition. Instructor of Criminal Law, Criminal Procedure and Constitutional Law at: St. Mary's Dominican College, Loyola School of Law, and Jefferson Parish Sheriff Office Training Academy
January 1982 - 1984	City Attorney, City of Harahan
1973 - 1984	Private General Civil Law Practice Porteous and Mustakas

EDUCATION:

1971	Juris Doctorate Louisiana State University School of Law, Baton Rouge Finalist, Robert Lee Tullis Moot Court Competition
1968	Bachelor of Arts, Major in Economics Louisiana State University, New Orleans

PROFESSIONAL AND PRIVATE ORGANIZATIONS:

1991 - 1992 President of the Fourth and Fifth Circuit Judges Association
Current Board Member - Executive Board of the Fourth and Fifth Circuit Judges Association
Past President - Louisiana District Attorney's Association (Assistant's Section)
Federal Bar Association
American Bar Association
Louisiana State Bar Association
Jefferson Bar Association
Former President St. Clement of Rome Men's Club

AWARDS:

Morality in Media of Louisiana - January 21, 1983
Brother Martin High School, Outstanding Service - 1987
University of Southwestern Louisiana, Criminal Justice Program - 1980

PROFESSIONAL CONTINUING LEGAL EDUCATION:

Annual Spring Judges Conference - Lafayette
Annual Fall Judges Conference
Annual District Attorney's Conference, Louisiana District Attorney Association
Career Prosecutor Course, National College of District Attorneys
Louisiana Evidence Seminars, Louisiana State University
Criminal Law Seminars, Louisiana State University

ADMITTED TO PRACTICE BEFORE:

United States Supreme Court
Louisiana Supreme Court
Federal District Court, Eastern District of Louisiana
United States Court of Appeal, 5th Circuit

ACTIVITIES AND HOBBIES:

Coach - football, baseball; Referee - basketball, Johnny Bright Playground
Hunting, fishing, golf

PERSONAL:

Born: New Orleans, Louisiana; December 15, 1946
Married to the former Carmella Ann Giardina, father of four children: Michael, Timothy, Thomas and Catherine

CHAMBERS OF
G. Thomas Porteous, Jr.
JUDGE, DIVISION "X"

Twenty-Fourth Judicial District Court
PARISH OF JEFFERSON
STATE OF LOUISIANA
Gretna

September 15, 1994

Committee on the Judiciary
Attn: Honorable Joseph R. Biden, Jr., Chairman
224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Senator Biden:

Pursuant to the request from the Judiciary Committee, enclosed is the original and two copies of the Motion to Dismiss in the Twenty-Fourth Judicial District Indigent Defender Board, et als vs. The State of Louisiana, et al, No. 413-728, 24th Judicial District Court. Also enclosed is the Writ Denial in Steven Augustus, et al vs. State of Louisiana, through its Governor, Edwin Edwards, et al, Parish of Jefferson, Twenty-Fourth Judicial District Court, Div. "D", No. 427-921.

The Augustus and Sierra cases cited in the confidential section of the Senate Questionnaire may be confusing. Originally, Augustus, et al vs. State of Louisiana, Governor Roemer, et al, 90-4667, U.S. District Court, Eastern District of Louisiana, was decided in federal court and declared LSA-R.S. 13:994(B)(1),(2),(3) to be unconstitutional.

Simultaneously, Augustus and Sierra were filed seeking a return of the funds collected pursuant to LSA-R.S. 13:994(B)(1),(2),(3). Only Augustus proceeded to trial because all parties agreed that the issues were identical in Sierra and the decision in Augustus would be dispositive in the Sierra case.

Accordingly, the denial of writs in Augustus makes the state court proceedings final.

If any further information is required, please advise.

Sincerely,

G. THOMAS PORTEOUS, JR.

GTPjr/rd

Enclosures

bcc: Nancy Scott-Finan

CHAMBERS OF
C. Thomas Perkins, Jr.
JUDGE, DIVISION "X"

Twenty-Fourth Judicial District Court
PARISH OF JEFFERSON
STATE OF LOUISIANA
Gretna

September 29, 1994

Committee on the Judiciary
Attn: Honorable Joseph R. Biden, Jr., Chairman
224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Senator Biden:

Pursuant to a request from your committee, please allow me to supplement my answer to Question 10.

Inadvertently, I omitted my membership in Chateau Golf and Country Club. I have held this membership for approximately nine years as an honorary member.

Since the date of my membership, Chateau Golf and Country Club has been completely nondiscriminatory and my membership has been fully disclosed to the Federal Bureau of Investigation and other organizations involved in the background check pertaining to my nomination.

Chateau Golf and Country Club was acquired by its present owners on September 29, 1992, pursuant to bankruptcy proceedings involving the previous owners.

Enclosed please find the original and two copies of the bylaws of Chateau Golf and Country Club from approximately 1989. The new ownership has not revised or modified these bylaws, but has allowed membership and participation open to all.

If any further information is required, please contact Michael Coons, General Manager, Chateau Golf and Country Club, at 1-504-467-1351. Mr. Coons has previously been contacted by the

Federal Bureau of Investigation as part of my background investigation.

Sincerely,

G. THOMAS PORTEOUS, JR.

GTPjr/rd

Enclosures

bcc: Nancy Scott-Finan

Twenty-Fourth Judicial District Court
PARISH OF JEFFERSON
STATE OF LOUISIANA
Gretna

CHAMBERS OF
C. Thomas Portens, Jr.
JUDGE, DIVISION "A"

September 29, 1994

Committee on the Judiciary
Attn: Honorable Joseph R. Biden, Jr., Chairman
224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Senator Biden:

Pursuant to a request from your committee, please allow me to supplement my answer to Question 10.

Inadvertently, I omitted my membership in Chateau Golf and Country Club. I have held this membership for approximately nine years as an honorary member.

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Federal Bureau of Investigation as part of my background investigation.

Sincerely,

G. THOMAS PORTEOUS, JR.

GTPjr/rd

Enclosures

CHATEAU GOLF

AND COUNTRY CLUB

As stated in its Charter, the OBJECTS AND PURPOSES OF CHATEAU GOLF AND COUNTRY CLUB are:

> It shall be the object and purpose of this Club to acquire, by purchase, lease or otherwise, an eighteen (18) hole golf course, together with a Clubhouse and all other improvements thereon located in the Parish of Jefferson, State of Louisiana, in that part thereof known as Chateau Estates, and to operate the same as a private golf and country club for the use of its members and guests; to acquire, by purchase, lease or otherwise and operate thereon tennis courts and one or more swimming pools for the private use and benefit of its members and guests; to promote, organize and conduct such recreational, cultural and sporting activities as to enhance the physical, moral and intellectual development of its members and guests; to do any and all other things necessary or germane to the accomplishment of the above objects and purposes.

The management of the Club and all corporate powers are vested in the BOARD OF DIRECTORS composed of no more than three (3) persons. The members of the BOARD OF DIRECTORS serve for one (1) year from the date of their election, or until their successors have been duly elected by the stockholders. At present there is only one stockholder and he holds all authorized and issued shares of stock in the corporation.

The BOARD OF DIRECTORS has authority to make and alter by-laws, determine the amount of the initiation fee and other fees, determine the amount of the annual

dues to be paid, establish such class or classes of membership as it may deem advisable, and to prescribe the qualifications and privileges, and all fees and dues to be paid by and the regulations to govern all such classes. It has the further authority to prepare, adopt, promulgate and enforce the rules and regulations of the Club. The BOARD OF DIRECTORS serves simultaneously as the Admissions Committee and it is vested with the power of general supervision over all of the affairs of the Club and it is the tribunal of last resort before which the appeal of disputed questions shall be ultimately decided.

The BOARD hereby promulgates the:

BY-LAWS
OF
CHATEAU GOLF AND COUNTRY CLUB

SECTION 1.

CLASSES OF MEMBERSHIP. The membership shall be divided into the following classes:

1) REGULAR - A Regular member shall be a person of good character or reputation who shall have been elected to membership in the manner hereinafter provided.

2) CORPORATE or FIRM - Members of this class shall enjoy all of the rights and privileges of Regular members, as defined in these By-Laws and the Club Rules and Regulations, except that the membership certificate shall be issued in the name of the corporation or firm and then assigned to an officer, executive or director for use. No more than five such assignees may be permitted for each corporate or firm membership, and each assignee shall be charged annual dues on the same basis as a Regular membership.

The assignee may be changed from time to time by the corporate or firm member, subject to the approval of the new assignee by the Admissions Committee. The annual dues charged of a corporate or firm member shall be the same as that charged Regular members, except that the corporate or firm member shall also be charged a fee of $100.00 each time a new assignee is approved and admitted.

3) NON-RESIDENT - A Non-Resident member shall be a person who would otherwise qualify as a Regular member except that his domicile and place of usual residence is located more than 100 statute miles from the Clubhouse.

4) LADIES - An unmarried lady, over the age of 18 years, of good character or reputation, who shall have been elected to membership in the manner hereinafter provided. Includable in this class of membership shall be the widow of a deceased member.

5) HONORARY - An Honorary member shall be an adult who has so distinguished himself in cultural, political, scientific, intellectual or athletic endeavor as to warrant the special honor of election to membership in the Club without the necessity of payment of initiation fees or payment of the annual dues required of other members.

6) TENNIS - A Tennis member shall be a person of good character or reputation whose principal athletic and recreational interest is tennis and who shall be elected to membership in the same manner as a Regular member.

7) SOCIAL - A Social member shall be a person of good character or reputation who shall be elected to membership in the same manner as a Regular member.

SECTION II.

NON-PROPRIETARY. Membership in Chateau Golf and Country Club does not include a proprietary interest in the Club and/or any of its facilities or movable or immovable property. Members are not issued stock in the Club but only Certificates of Membership therein.

SECTION III.

ANNUAL DUES AND FEES. The annual dues, initiation fee and other fees shall be fixed by the BOARD OF DIRECTORS.

SECTION IV.

CLUB COUNCIL. There shall be a Club Council which shall consist of seven (7) members in good standing. Each member shall be appointed by the BOARD OF DIRECTORS and shall serve as such until he resigns or is removed by the BOARD OF DIRECTORS.

The Chairman of the Club Council shall be elected at the annual meeting of the Club Council, which shall be held during the month of October.

The Chairman of the Club Council shall preside over all meetings of the Club Council and he shall serve as such until his successor is elected and installed.

SECTION V.

ELECTION TO MEMBERSHIP. All nominations for membership must be made by a Regular member. Nominations must be in writing, addressed to the Club General Manager and they must be seconded by three other Regular members, two of whom must be a member of the Club Council. The nominator and at least one of the seconding parties must affirm that they know him to be of good moral character or reputation and that they are not related to such nominee by blood or by marriage.

Upon receipt of a letter of nomination and the required seconding letters, the Club General Manager shall mail to the nominee an application for membership, and shall post the nominee's name and his proposers on the Club bulletin board.

After receipt of the completed, signed application for membership, the Club General Manager shall deliver the same to the Chairman of the Club Council, who shall deliver the same to the Admissions Committee. The Admissions Committee, by majority vote, shall accept or reject the nominee's application for membership. All proceedings before the Club Council and the Admissions Committee regarding consideration of an application for membership shall be kept in strictest confidence and it shall be the obligation of each member of the Club Council and each member of the Admissions Committee to preserve the secrecy of the deliberations, except that each nominee shall be informed of the disposition of his application by correspondence addressed to him.

SECTION VI.

PRIVILEGES. All classes of membership shall have such privileges and use of the Clubhouse, golf course and other facilities as may be given them by the Rules and Regulations adopted and promulgated by the BOARD OF DIRECTORS.

SECTION VII.

SUSPENSIONS AND EXPULSIONS. The BOARD OF DIRECTORS shall be vested with the powers to censure, suspend and expel members for conduct which in the opinion of the BOARD is detrimental to the good order, welfare or reputation of the Club; provided that no sentence of suspension or expulsion shall be pronounced by the BOARD OF DIRECTORS except upon a vote of two-thirds (2/3rds) of the members of the BOARD. The action of the BOARD OF DIRECTORS shall be final and conclusive.

SECTION VIII.

RESIGNATIONS. No resignation shall be accepted unless the resigning member shall have first paid all indebtedness due to the Club. The resignation shall become effective on the first day of the next succeeding quarter during which the resignation shall have been handed to the Secretary and all indebtedness to the Club shall have been paid.

SECTION IX.

DELINQUENTS. All indebtednesses due to the Club by a

member or a guest shall be due and payable on the first day of the month following the month within which the indebtedness was incurred. Accounts shall be considered delinquent thirty (30) days after the last day of the month in which the charge was made. The member shall be notified of such delinquency and a delinquency penalty of ten (10%) percent shall be added to that portion of his account which is delinquent. In the event that the entire account has not been paid in full within fifteen (15) days from the date of mailing of the notice of delinquency, the delinquent member shall be suspended from the privileges of the Club. Notice of suspension shall be posted on the Club bulletin board. Should the suspended member remain suspended for thirty (30) days, he shall be automatically expelled from the Club membership and forever denied the use of the Club facilities and its grounds.

SECTION X.

COMMITTEES. The following are the standing committees of Chateau Golf and Country Club. The chairman of each committee shall be a member of the Club Council and remaining members of each committee shall be selected by the chairman of the committee, with the advice and consent of the Club Council.

A. GOLF COMMITTEE
B. FOOD & BEVERAGE COMMITTEE
C. SOCIAL COMMITTEE
D. CLUBHOUSE COMMITTEE
E. TENNIS COMMITTEE
F. SWIMMING POOL COMMITTEE
G. MEMBERSHIP COMMITTEE

SECTION XI.

These amended By-Laws shall supersede all prior By-Laws and they shall become effective as of this date.

CERTIFICATE

I hereby certify that the above and foregoing is a true and correct copy of the By-Laws of Chateau Golf and Country Club, Ltd., which were unanimously adopted by the BOARD OF DIRECTORS at its meeting on May 1, 1989, with all members present and voting.

J. MICHAEL COONS, Secretary

Twenty-Fourth Judicial District Court
PARISH OF JEFFERSON
STATE OF LOUISIANA
Gretna

CHAMBERS OF
G. Thomas Porteous, Jr.
JUDGE, DIVISION "K"

September 27, 1994

Committee on the Judiciary
Attn: Honorable Joseph R. Biden, Jr., Chairman
224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Senator Biden:

Pursuant to the request from the Judiciary Committee, enclosed please find the original and two copies of the decisions referred to by me in response to Question 15 (1). Copies of the unpublished opinions of the Court of Appeals in the following cases are also attached:

In the Matter of Wrongful Death of Stanton J. Stark, #No. 86-CA-34 (La. App. 5 Cir., June, 1986)

Judy Watts on behalf of minor, Polly Watts v. J. C. Penny, et al, App. Ct. # 93-CA-811 , (La. App. 5 Cir., 1994)

All of the decisions referred to in my response to Question 15 (3) were rendered from the bench, and accordingly, there are no written decisions. The only exception is State vs. Lane Nelson and a copy of this decision is attached.

If any further information is required, please advise.

Sincerely,

G. THOMAS PORTEOUS, JR.

GTPjr/rd

Enclosures

bcc: Nancy Scott-Finan

NOT DESIGNATED
FOR PUBLICATION

IN THE MATTER OF THE WRONGFUL DEATH OF STANTON J. STARK	*	NO. 86-CA-34
	*	COURT OF APPEAL
	*	FIFTH CIRCUIT
	*	STATE OF LOUISIANA

APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NUMBER 263-171, DIVISION "A"
HONORABLE G. THOMAS PORTEOUS, JR., JUDGE

CHARLES GRISBAUM, JR.

JUDGE

JUN 02 1986

(Court composed of Judges Lawrence A. Chehardy, Thomas J. Kliebert, and Charles Grisbaum, Jr.)

W. PAUL ANDERSSON, for appellant
HAMMETT, LEAKE & HAMMETT
2500 Canal Place One
New Orleans, Louisiana 70130-1193

EDWARD M. GORDON III, for appellees
4141 Veterans Boulevard, Suite 214
Metairie, Louisiana 70002

JOHN R. STARK, for appellees
IN PROPER PERSON
5909 Lafreniere Street
Metairie, Louisiana 70003

AMENDED IN PART, AND AS AMENDED, AFFIRMED

On appeal is a judgment notwithstanding the verdict (J.N.O.V.) disposition of a wrongful death matter in which the jury had allocated fault 44 percent to Stephen Douglas and 56 percent to the decedent, Stanton Stark. We amend and, as amended, we affirm.

We are called upon to determine:

(1) Whether the trial court erred in failing to credit GEICO for the $10,000 paid by the auto liability insurer, State Farm; and

(2) Whether the trial court erred in granting the J.N.O.V. in that (a) it erroneously reassessed percentages

of negligence and (b) it erroneously increased the quantum award.

The record shows that on November 25, 1981, as Stephen Douglas was about to depart an evening party attended by various neighborhood teen-aged males, Stanton Stark walked up to the passenger door of Douglas' vehicle. Besides Douglas, three other males were inside the car. Shortly after Stark approached, Douglas pulled away, made a U-turn--in part, across a neighbor's lawn--and headed south down Sandra Avenue towards Lafreniere Street. For whatever reason, Stark, who had been positioned in the open doorway of the car, remained so positioned, riding on the door sill as the car followed this path. After the car straightened out on Sandra, Stark either fell or jumped off, struck his head, and later died.

In addressing the initial issue, we note the plaintiffs in this suit oppose GEICO, their uninsured/under-insured motorist carrier. State Farm paid its $10,000 liability limit for coverage on the Douglas auto and was dismissed at the close of the plaintiffs' case. Plaintiffs concede that GEICO is entitled to a $10,000 credit for the sum paid by State Farm. Calculated in the initial judgment, the credit must have been omitted inadvertently from the J.N.O.V. Accordingly, we amend the judgment of the trial court to incorporate the $10,000 credit.

We now turn to the remaining issue and initially address whether the trial court erred in reassessing the negligence of the parties. The jury found that Stark assumed the risk of injury. It also specifically allocated fault at 44 percent to Douglas and 56 percent to Stark. In casting

its first and J.N.O.V. judgments, the court disregarded this assumption of risk finding, concluding that La. C.C. art. 2323 more properly applied to assign degrees of fault. In essence, then, the court determined that the finding as to assumption of risk was legally irrelevant.

The trial court based its conclusion on what we consider dicta in Bell v. Jet Wheel Blast, 462 So.2d 166 (La. 1985) that indicates:

> In those types of cases in which comparative fault principles may be applied, the principles of article 2323 and its predecessors should be applied by analogy so that the claim for damages recoverable shall be reduced in proportion to the degree or percentage of negligence attributable to the person suffering the injury, death or loss. . . . Furthermore, the adoption of a system of comparative fault should, where it applies, entail the merger of the defenses of misuse and assumption of risk into the general scheme of assessment of liability in proportion to fault.

Id. at 172.

Our jurisprudence states that "The elements of the defense of assumption of the risk are: (1) that the plaintiff had knowledge of the danger; (2) that he understood and appreciated the risk therefrom; and (3) that he voluntarily exposed himself to such risk." Fritscher v. Chateau Golf & Country Club, 453 So.2d 964, 967 (La. App. 5th Cir. 1984), writ denied, 460 So.2d 604 (La. 1984). See also Beck v. Boh Bros. Constr. Co., 467 So.2d 1318, 1321 (La. App. 5th Cir. 1985). Here, it appears that Stark had been drinking, which might well have affected his knowledge of danger or his appreciation of that danger. Moreover, the testimony without exception indicates that Stark's approaching the car and his behavior thereafter were unplanned and unanticipated.

He had not planned to ride with Douglas, nor does it appear that he was attempting to enter the car. The spontaneity of Stark's behavior militates against his fully comprehending the risks attendant. Finally, nowhere does it appear that Stark knew that Douglas would start his car and drive away with Stark clinging to its side. Once Douglas left, Stark had no idea how far he would drive. Even if Stark hopped aboard once the car began to move, it cannot be said that Stark voluntarily assumed the risks of bouncing across a neighbor's yard or of proceeding on down the street. Stark was given no opportunity to get off during the course of these maneuvers. Given the leanings of Bell and the facts herein, we find the court correctly concluded that assumption of the risk was inapplicable as a matter of law.

We now turn to the questions of whether the trial court erred in its reassessment of the percentages of fault. By the 1979 amendment of La. C.C.P. art. 1811 quantum may, indeed, be altered by J.N.O.V. provided that "based on the evidence there is no genuine issue of fact." That is, "where the trial court is convinced that, under the evidence, reasonable minds could not differ as to the amount of damages, it should have the authority to grant the appropriate judgment notwithstanding the verdict." La. C.C.P. art. 1811 comments. We also note that this enunciated standard applies to changes affecting the merits, more specifically, the reassessment of fault. Blum v. New Orleans Pub. Serv., Inc., 469 So.2d 1117, 1119 (La. App. 4th Cir. 1985), writ denied, 472 So.2d 921 (La. 1985).

The trial court, in its reasons for judgment, states, in part:

Viewing the evidence most favorable to the party against whom the motion is made, the court finds that defendant failed to prove that plaintiff was in any way at fault in becoming an "outrider" on the vehicle, voluntarily. All evidence preponderates to the finding that plaintiff found himself in a position of imminent peril without sufficient time to consider and weigh all circumstances or the best means that may be adopted to avoid the impending danger.

There was no evidence presented which could substantiate a finding that the emergency was brought about by any alleged fault on the part of Stanton J. Stark.

Tim Talbot testified that when Stanton got to the car the lights and engine were off. Norman McKay testified that the car was stopped when Stanton was on the threshold.

It is clear from the testimony of those present who could recall the particulars of how Stanton came to be on the auto that Stanton was positioned between or/on the threshold and the open car door when the vehicle began to move. The driver did not use reasonable care in taking on its passenger; Stanton had every right to assume that the vehicle would not move until he was safely away or inside the vehicle. It is also clear that once the vehicle did pull forward Stanton was on the horns of a dilemma . . . [from which] only hindsight and cool reflection could have possibly provided a safe escape. The law clearly does not hold plaintiff to this standard of conduct. See Carter v. City Parish Government[,] 423 So.2d 1080 (La. 1982).

* * *

It is clear from the evidence that at the beginning of the scenario Stanton Stark was nothing more than a pedestrian, resting on the Douglas vehicle while observing the activity of the occupants. Stanton then involuntarily became an "outrider" on the vehicle because of the sudden and unexpected movement of the car.

The court is of the opinion that Stanton had every legal right to assume

> that there would be no movement of the vehicle until he was safely away from, or inside of, the vehicle.
>
> Under these circumstances, the court concludes that Steven [sic] Douglas breached the duty he owed to plaintiff to exercise reasonable care in the operation and control of his vehicle and the risk of plaintiff's injury was within the scope of that duty. Inasmuch as Steven [sic] Douglas' negligent conduct was a cause[-]in[-]fact of the accident and resulting injuries, he is liable to plaintiff.

We agree.

Regarding the final issue, quantum, we note the trial court, in its reasons for judgment, states, "The court is convinced that, under the evidence of this case, reasonable minds could not differ as to the fact that a much higher award of damages was justified." Again, we agree. Recognizing the well-settled legal axiom that a trial court has wide discretion in its award of damages, we will not disturb such an award absent manifest error, and we find none. Accordingly, we find no error in the trial court's entry of the judgment N.O.V. in favor of the plaintiff.

Other issues have been raised, which, we find, have no merit.

For the reasons assigned, the judgment of the trial court is affirmed, with the exception that this court reduces the damage award by $10,000, which is the amount State Farm Mutual Automobile Insurance Company, as the insurer of Stephen Douglas, has already paid the plaintiffs.

AMENDED IN PART, AND AS AMENDED, AFFIRMED

NOT DESIGNATED
FOR PUBLICATION

JUDY WATTS, ON BEHALF OF HER MINOR DAUGHTER, POLLY WATTS

VERSUS

J. C. PENNEY AND LIBERTY MUTUAL INSURANCE COMPANY

NO. 93-CA-811

COURT OF APPEAL

FIFTH CIRCUIT

STATE OF LOUISIANA

ON APPEAL FROM THE 24TH JUDICIAL DISTRICT COURT
STATE OF LOUISIANA, PARISH OF JEFFERSON
NO. 306-035, DIVISION "A"
THE HONORABLE G. THOMAS PORTEOUS, JUDGE

FEB 23 1994

SOL GOTHARD
JUDGE

(Court composed of Judges Charles Grisbaum, Jr., Edward A. Dufresne, Jr. and Sol Gothard.)

PATRICK J. SANDERS
3200 Ridgelake Drive, Suite 100
Metairie, Louisiana 70002
Attorney for Intervenor/Appellant (Thomas Cerullo)

DANIEL J. MARKEY, JR.
5559 Canal Boulevard
New Orleans, Louisiana 70124
Attorney for Defendant In Intervention (Lawrence J. Hand)

AMENDED AND AS AMENDED, AFFIRMED

Appellant, Thomas Cerullo, intervened in this action for damages to protect his rights under a contingency fee contract with the plaintiff. The trial court awarded him $5,000.00 on a quantum meruit basis for professional services rendered. Mr. Cerullo brings this appeal seeking review of the adequacy of the amount awarded and requesting additional funds for reimbursement of outstanding advances for medical expenses and costs related to the case.

In January, 1984, Polly Watts, the minor daughter of Judith Watts, was injured when she fell in a dressing room of the J.C. Penney store on Lapalco Boulevard in Jefferson Parish. Judith Watts employed Thomas Cerullo to assert the claim. Ms. Watts signed a contingency fee contract with Mr. Cerullo and suit was filed against J.C. Penney and its insurer, Liberty Mutual Insurance Company on January 25, 1985.

In July, 1987, Ms. Watts discharged Mr. Cerullo and hired Lawrence Hand to represent her in the action for damages. Mr. Cerullo filed a petition of intervention in November, 1988 seeking attorney's fees and reimbursement of certain costs. The lawsuit was settled out of court on December 10, 1990 for a total of $270,000.00; of which, $90,000.00 was withheld for payment of attorney's fees. Mr. Hand received one-half of that amount, or $45,000.00, immediately and the remaining $45,000.00 was held in escrow pending consideration of and ruling on Mr. Cerullo's claim.

After a trial on the merits, Mr. Cerullo was awarded $5,000.00 and the remaining $40,000.00 was awarded to Mr. Hand. The trial court gave extensive written reasons for judgment which indicate that the award represents payment for thirty hours of work at $125.00 per hour. The trial court stated that, "the Court finds that Mr. Cerullo's contribution to the ultimate resolution of the case was minimal. His sole accomplishment was to interrupt prescription." Mr. Cerullo argues that the award is too low to fairly compensate him for his work.

The litigation record of the principal matter shows that Mr. Cerullo filed only one pleading, the initial petition. Service on that petition was held and, in fact, never accomplished. No depositions were taken in the three years Mr. Cerullo had the case. At trial, Mr. Cerullo testified that he did not keep a record of the time he spent working on the case. He submitted a reconstructed summary of hours worked, asserting that he spent a total of 263.25 hours.

At trial Mr. Cerullo stipulated that service on the petition for damages was held, that there was no litigation using the courts and, that there were no depositions or discovery of any kind. He testified that he spent time researching the case, discussing the matter with the insurance adjustar and various medical and legal experts. Mr. Cerullo stated that he did not move forward with the case because the injured girl was only

fourteen at the time and he wanted to know the full extent of her injuries before he settled the matter.

Mr. Cerullo introduced testimony from Dr. Rick Saluga, a chiropractor who treated Polly Watts for about three weeks. Dr. Saluga verified that, considering travel time, eight to ten hours would be a fair estimate of time spent by Mr. Cerullo in consultation. Donald Klein, an attorney, testified that Mr. Cerullo spent about ten hours discussing the matter with him.

The record further shows that Mr. Cerullo wrote eight letters to Liberty Mutual during the three years he represented Ms. Watts. The last letter, written in March, 1986 contained a demand for $175,000.00 to settle the claim. That demand was rejected by the insurance company and a counter offer of $15,000.00 was made in August, 1986. The matter apparently did not proceed beyond that, and in January of 1987 Mr. Cerullo was discharged.

Ms. Watts testified that she had few meetings with Mr. Cerullo, and that these meetings usually took place outside of his office. She complained that Mr. Cerullo was uncommunicative and that the limited communications were fraught with misrepresentations.

When a party to a contingency fee contract discharges his attorney before the fee is earned, the attorney's mandate is revoked and the contract is dissolved. Quantum meruit then becomes the proper basis for recovery. Saucier v. Hayes Dairy Products, Inc., 373 So.2d 102 (La.1978); Keys v. Mercy Hosp. of New Orleans, 537 So.2d 1223 (La.App. 4th Cir.1989). In Toups v. Brainis, 608 So.2d 246, 247 (La.App. 5th Cir.1992), this court stated:

> Under Saucier v. Hayes Dairy Products, Inc., 373 So.2d 102 (La.1979), the attorney fee of a discharged attorney is to be apportioned according to the respective services and contributions of the attorney's work performed and other relevant factors as set forth in Rule 1.5 of the Rules of Professional Conduct; which provides in pertinent part:
>
> > (a) A lawyer's fee shall be reasonable. The factors to be

considered in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) The fee customarily charged in the locality for similar legal services;

(4) The amount involved and the results obtained;

(5) The time limitations imposed by the client or by the circumstances;

(6) The nature and length of the professional relationship with the client;

7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) Whether the fee is fixed or contingent.

Quantum meruit means as much as is deserved. Smith v. Westside Transit Lines, Inc., 313 So.2d 371 (La.App. 4th Cir.1975), writ denied, 318 So.2d 43 (La.1975). A quantum meruit analysis properly evaluates not merely the laws expended, but the results and benefits obtained. Smith v. Westside Transit Lines, Inc., supra; Keys v. Mercy Hosp. of New Orleans, supra, at 1225. Therefore, recovery is limited to the actual value of the service rendered. Saucier v. Hayes Dairy Products, Inc., supra; Keys v. Mercy Hosp. of New Orleans, supra.

The trial court gave credence to Ms. Watts testimony and found that she had ample cause to discharge Mr. Cerullo for his lack of candor and failure to communicate. The court further found that Mr. Cerullo took a "wait and see" approach to the case and should not be compensated for that time. The court further found that the estimate of the hours spent, reconstructed after the fact and offered at trial by Mr. Cerullo, was exaggerated.

Given the facts of this case we cannot hold that the trial court abused its discretion in awarding Mr. Cerullo a total of $5,000.00 in attorney's fees.

Mr. Cerullo also complains that the court erred in failing to award him $2,423.00 as reimbursement for outstanding advances for medical expenses and costs related to the case. Mr. Cerullo introduced copies of cancelled checks made out to Ms. Watts totaling $425.00, two checks to the clerk of court totaling $130.00 and several other checks for various medical expenses totaling $689.00. Those costs total $1,244.00. Mr. Cerullo also asks for reimbursement for an additional $1,179.00 for litigation costs guaranteed. The trial court judgment awarded Mr. Cerullo reimbursement for the initial filing fee but was silent as to the other costs.

Recently, in Dupuis v. Faulk, 609 So.2d 1190, at 1192, (La.App. 3rd Cir. 1992), the court stated:

> The Privilege for attorney's fees is granted by La. R.S. 9:5001 and R.S. 37:218. Both statutes were amended by Acts 1989, No. 78 § 1, effective June 16, 1989, to include the following definitions:
>
> 9:5001
> B. The term "professional fees", as used in this Section, means the agreed upon fee, whether fixed or contingent, and any and all other amounts advanced by the attorney to or on behalf of the client, as permitted by the Rules of Professional Conduct of the Louisiana State Bar Association.
>
> 37:218
> B. The term "fee", as used in this Section, means the agreed upon fee, whether fixed or contingent, and any and all other amounts advanced by the attorney to or on behalf of the client, as permitted by the Rules of Professional Conduct of the Louisiana State Bar Association.
>
> The Rules of Professional Conduct of the Louisiana Bar Association with regard to the advances made to a client are found in Rule 1.8(e):
>
> (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

> (1) A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
>
> (2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

Rule 1.8(e) embodies the former Disciplinary Rule 5-103(B):

> Disciplinary Rule 5-103(B) provides: "While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to his client, except that the lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses."

In Louisiana State Bar Association v. Edwins, 329 So.2d 437 (La.1976), at page 446, the Supreme Court addressed the propriety of advancing financial assistance during representation of a client:

> If an impoverished person is unable to secure subsistence from some source during disability, he may be deprived of the only effective means by which he can wait out the necessary delays that result from litigation to enforce his cause of action. He may, for reasons of economic necessity and physical need, be forced to settle his claim for an inadequate amount.

The Dupuis court held that certain medical and living expenses are now included a part of the "fee" for privilege purposes. The court at 1193, further observed that:

> ...In extending the privilege to cover such advances, the legislature intended to overrule, at least in part, Calk v. Highland Construction & Manufacturing, 376 So.2d 495 (La.1979).
>
> In Calk, supra, the Louisiana Supreme Court found that the word "fee" did not include advances which are in the nature of a loan, nor does it include the payment or reimbursement of expenses which, like medical bills, constitute the client's special damages...

We find that interpretation of the legislative intent to be consistent with the changes made in the 1989 amendments to LSA-R.S. 37:218 and LSA-R.S. 9:5001. Thus, we find the trial court's judgment should be amended to award Mr. Cerullo reimbursement of advances made by him in furtherance of Ms. Watts litigation. We do not find, nor has Mr. Cerullo suggested, jurisprudential support for an award of funds secured but not paid to medical providers.

For the foregoing reasons the judgment of the trial court is amended to award Mr. Cerullo the sum of $1244.00 for reimbursement of funds advanced. Mr. Hand's award is decreased by $1,244.00. In all other respects the judgment is affirmed.

AMENDED AND AS AMENDED, AFFIRMED

G. THOMAS PORTEOUS, JR.
PERSONAL DATA QUESTIONNAIRE

1. Full name and social security number.

Gabriel Thomas Porteous, Jr.
[redacted]

2. Office and home addresses, zip codes, telephone numbers and area codes.

Office: 24th Judicial District Court, Division "A"
Gretna Courthouse Annex Bldg.
Second Floor, Room 200
Gretna, LA 70053
(504) 364-3850

Home: 4801 Neyrey Dr.
Metairie, LA 70002
(504) 455-5879

3. Date and place of birth.

December 15, 1946
New Orleans, LA

4. Are you a naturalized citizen? If so, give date and place of naturalization.

No.

5. Family status.

a. Have you ever been married? If so, state the date of marriage and your spouse's full name including maiden name, if applicable.

Yes. June 28, 1969 - Carmella Ann Giardina Porteous

b. Have you been divorced? If so, give particulars, including the date,

the name of the moving party, the number of the case, the court, and the grounds. Give the name and current address of any former spouse(s).

No.

c. Names of your children, with age, address and present occupation of each.

Name	Age	Occupation
Michael Patrick Porteous 4801 Neyrey Dr. Metairie, LA 70002	23	Student
Timothy Alexander Porteous (school address) P.O. Box 25132 Phi Gamma Delta Fraternity Baton Rouge, LA 70894	21	Student
Thomas Anthony Porteous (school address) 1727 S. Brightside View, Apt. A Baton Rouge, LA 70870	19	Student
Catherine Anne Porteous 4801 Neyrey Dr. Metairie, LA 70002	13	Student

6. Have you had any military service? If so, give dates, branch of service, rank or rate, serial number, present status, and type of discharge, if applicable.

No.

7. List each college and law school you attended, including dates of attendance, the degrees awarded and, if you left any institution without receiving a degree, the reason for leaving.

Louisiana State University (New Orleans) 1964-1968

Bachelor of Arts - Economics

Louisiana State University Law School — 1968-1971
Baton Rouge, LA
Juris Doctor

8. List all courts in which you have been admitted to practice, with dates of admission. Give the same information for administrative bodies which require special admission to practice.

All Courts of Louisiana	September 7, 1971
United States District Court, Eastern District of Louisiana	September 19,1972
United States Supreme Court	April 18, 1977
United States Court of Appeals, 5th Circuit	October 1, 1981

9. Describe chronologically your law practice and experience after your graduation from law school and until you became a judge, including:

a. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk.

No.

b. whether you practiced alone, and if so, the addresses and the dates.

No.

c. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, the nature of your connection with each, and the names, addresses and current telephone numbers for individuals who have direct personal knowledge about your work at such law firm, company or government agency.

Attorney General
State of Louisiana
P.O.Box 94005
Baton Rouge, LA 70804
You may contact:
Jack Yelverton
Assistant Atty. General
(504) 342-7013
same address

Special Counsel
9/10/71 -10/7/73

District Attorney's Office
Parish of Jefferson
District Atty. John Mamoulides
Gretna Courthouse Annex Bldg, 5th Floor
Gretna, LA 70053
You may contact:
John Mamoulides
same address
(504) 368-1020

Chief Felony Complaint Div.:
10/8/73 - 1/31/75
Supervisor: 2/1/75 - 8/6/84

Edwards, Porteous & Amato
139 Huey P. Long Ave.
Gretna, LA 70053
You may contact:
Marion Edwards
District Attorney's Office
Gretna Courthouse Annex Bldg., 5th Floor
Gretna, LA 70053
(504) 368-1020 and/or
Jacob Amato
901 Derbigny St.
Gretna, LA 70053
(504) 367-8181

Partner
October 1973 - July 1974

Edwards, Porteous & Lee
139 Huey P. Long Ave.
Gretna, LA 70053
You may contact:

Partner
August 1974 - January 1976

Sheriff Harry Lee
Parish of Jefferson
100 Huey P. Long Ave.
P.O.Box 485
Gretna, LA 70054
(504) 363-5500
Marion Edwards
(see above)

Porteous, Lee & Mustakas — Partner
139 Huey P. Long Ave. — February 1976 - April 1980
Gretna, LA 70053
You may contact:
Carlotta Cuccia
1317 Nursery
Metairie, LA
(504)833-5210

Porteous & Mustakas — Partner
3445 North Causeway Blvd. — April 1980 - August 1984
Metairie, LA 70002
Contact: same as above

City Attorney's Office — City Attorney
City of Harahan — 7/1/82 - 8/23/84
6437 Jefferson Hwy.
Harahan, LA 70123
You may contact:
Mayor Carlo Ferrara
(504) 737-6383
same address

d. any other relevant particulars.

None.

10. a. What was the general character of your practice before you became a judge, dividing it into periods with dates if its character changed

over the years.

General Civil Practice - in private practice & City Attorney
Criminal Prosecution - Attorney General & District Attorney

b. Describe your typical former clients, and mention the areas, if any, in which you specialized.

My clients were all individuals until approximately 1975. Subsequently, my practice consisted of corporate representation in areas such as: maritime defense for barge fleeting operations, NLRB appearances, and general corporate representation. Additionally, from 1979 until 1984, I dealt with corporations that developed and operated tank terminal facilities.

As City Attorney, I handled all matters involving the City of Harahan and also prosecuted municipal violations in the Mayor's Court

11. a. Did you appear in court regularly, occasionally or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Regularly.

b. What percentage of these appearances was in:
   1) Federal courts. 20%
   2) State courts of record. 80%
   3) Other courts. none

c. What percentage of your litigation was:
   1) Civil. 50%
   2) Criminal. 50%

d. State the number of cases you tried to verdict or judgment (rather than settled) in courts of record, indicating whether you were sole counsel, chief counsel, or associate counsel.

350 plus - Sole Counsel, 80%; Chief Counsel, 15%; and Associate Counsel, 5%.

e. What percentage of these trials was:
   1) Jury. 40%
   2) Non-jury. 60%

f. Describe ten of the most significant litigated matters which you personally handled and give the citations, if the cases were reported. Give a capsule summary of the substance of each case, and a succinct statement of what you believe to be the particular significance of the case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case a) the dates of the trial period or periods, b) the name of the court and the name of the judge before whom the case was tried, and c) the individual name, address and telephone numbers of co-counsel and of counsel for each of the other parties.

1. Tellepsen Construction Co. et al v. M/S SANTISTA, et al
Civil Action #75-2249, U.S. District Court, Eastern Dist. of Louisiana
Section "C", Honorable Alvin Rubin

This matter was tried for the most part; a settlement was reached during trial and an agreement to dismiss was filed prior to rendition of judgment, August 9, 1976.

Capsule summary of case: Ship collision. The dock was constructed by my clients, Tellepsen Construction Company and Lagradeur International. This case was noteworthy because it was major litigation involving issues of negligence, and limitation and remoteness of damage claims.
Final Disposition: Settled to my clients' satisfaction.

G. Thomas Porteous, Jr.
Counsel for Tellepsen Construction Co. & Lagradeur International
(Sole Counsel)

Opposing Counsel:
Terriberry, Carroll, Yancey & Farrell
Walter Carroll, Jr.(retired)
3100 Energy Centre
1100 Poydras St.

New Orleans, LA 70163
(504) 523-6451

2. William E. Cazaubon v. Acme Truck Lines, Inc. and Commercial Union Assurance Company c/w
William E. Cazaubon v. Ocean Chandler Service, Inc., Daniel S. Barrilleaux and Aetna Casualty and Surety Co.
Civil Action # 244-229, 24th Judicial District Court, State of Louisiana Division "A", Judge Roy Price

Trial on the merits, November 22nd & 23rd, 1982

Chief Counsel for Plaintiff: G. Thomas Porteous, Jr.

Capsule summary of case: This matter concerned a suit for personal injuries resulting from an automobile accident. There were significant questions in regard to: causation of the accident; the extent to which plaintiff's injuries were related to the accident; and the amount of future wages that would justly compensate plaintiff. Final Disposition: Judgment for plaintiff.

Co-Counsel:
Don Gardner
6380 Jefferson Hwy.
Harahan, LA 70123
(504) 737-6651

Opposing Counsel:
Rene A. Pastorek
Ste. 1060
3900 N.Causeway Blvd.
Metairie, LA 70002
(504) 831-3747

Wayne T. McGaw
365 Canal Street
Room 1870
New Orleans, LA 70140

(504) 528-2058

3. State of Louisiana v. John J. Storms, III
Criminal # 79-1114, 24th Judicial District Court
Division "M", Judge Robert J. Burns
Citation: 406 So.2d 135, (La. 1981)

Jury Trial, November 26, 27, 28, 29th, 1979.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Count 1 aggravated rape; Count 2, aggravated crimes against nature. This case required the testimony of a 10 year old victim. Case preparation was crucial. This necessitated many visits and meetings with the child in order to gain her trust and confidence which was essential to her trial testimony. Final Disposition: Jury Verdict - Guilty as charged; Affirmed.

Trial Assistant for State:
Assistant District Attorney Arthur Lentini
2551 Metairie Road
Metairie, LA 70001
(504) 838-8777

Defense Counsel:
Sam Dalton
2001 Jefferson Hwy.
Jefferson, LA 70121
(504) 835-4289

Co-Defense Counsel:
George Troxell
4330 Canal Street
New Orleans,LA 70119
(504) 488-8800

4. State of Louisiana v. Leonard J. Fagot

Criminal # 76-2116, 24th Judicial District Court
Division "J", Judge Patrick E. Carr
Citation: None, defendant died while out on bond prior to appeal.

Jury Trial, December 12, 13, 14, 15, 16, 19th, 1977.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Second Degree Murder. This was a major case involving a prominent local lawyer; it received a lot of public attention. The case was made more complex because of the health of defendant. Medical support was provided during trial in the event the defendant required treatment. The appearance of defendant on a stretcher invoked the emotions of the jury and it took considerable perseverance to prevent the jury from being swayed by sympathy.
Final Disposition: Verdict - Guilty as charged; No appeal; defendant alleged to have committed suicide, body found in trunk of car.

Co-Counsel for State:
Assistant District Attorney William Hall
3500 N. Hullen Street
Metairie, LA 70002
(504) 456-8692

Defense Counsels:
Robert Broussard (deceased)
Roy Price (deceased)

5. State of Louisiana v. Jan J. Poretto
Criminal # 80-1980, 81-1003, 24th Judicial District Court
Division "G", Judge Herbert Gautreaux
Citation: 468 So.2d 1142, (La. May,1985); 475 So.2d 314,(La. Sept.,1985)

Jury Trial, November 2, 3, 4, 5, 6th, 1981.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Second Degree Murder,

Aggravated Battery. The defendant in this case was a New Orleans policeman. Major question concerning use of certain statements and hypnotic procedures used on the wife by the police.
Final Disposition: Jury Verdict - Guilty as charged; Affirmed.

Co-Counsel for State:
Assistant District Attorney Gordon Konrad
P.O. Box 10890
Jefferson, LA 70181 /or
3900 River Rd., Suite 6
Jefferson, LA 70121
(504) 831-9985

Defense Counsel:
Ralph Whalen
3170 Energy Centre
1100 Poydras Street
New Orleans, LA 70163
(504) 582-2333

6. State of Louisiana v. James Nolen
Criminal # 81-4045, 24th Judicial District Court
Division "J", Judge Jacob Karno
Citation: 461 So.2d 1073 (La. App. 5th Cir 1984)

Jury Trial, August 12, 13, 14, 15th, 1982.

Sole Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Aggravated rape case involved a vicious attack on a young woman. Defense put the victims's credibility at issue because she voluntarily left with the attacker and she was employed as a bartender. Throughout the trial the defendant remained belligerent, this compelled the trial judge to issue warnings. Use of restraints were later necessitated in order to maintain appropriate trial decorum.

Final Disposition: Jury verdict - Guilty as charged; 5th Cir. Ct of Appeals - Affirmed.

Defense Counsel:
Phil Johnson
(inactive)
(714) 275-6066

7. State of Louisiana v. Joseph Batiste
Criminal #71-1081, 24th Judicial District Court
Division "A", Judge Louis DeSonier
Citation: 318 So.2d 27 (LA 1975)

Jury Trial, April 10, 11th, 1972.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Murder. This was the first capital case I tried. The trial involved complex issues of law and fact.
Final Disposition: Jury verdict - Guilty of Murder, Death Sentence; Supreme Court - Affirmed conviction, death sentence annulled and set aside per: Furman v. Georgia, 408 U.S. 238; remanded, sentenced to life in prison.

Defense Counsel:
Philip Schoen Brooks
723 Hillary St.
New Orleans, LA 70118
(504) 866-6666

8. State v. Christopher J. Rebstock

Criminal # 82-67, 24th Judicial District Court
Division "A", Judge Roy A. Price
Citation: 413 So.2d 510, (April, 1982); 418 So.2d 1306, (La. Sept 1982)

Motion to Suppress Confession: April 13, 1982.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: 2nd Degree Murder. The case involved a sixteen year old. Issues of law involving the statements he made to

police and to his father. There was two statements involved. One was an inculpatory statement made to his father. The other was a recorded confession. The Supreme Court held that the boy's arrest was not illegal and the statement obtained as result of the arrest was admissible since the boy and his father had a short private conversation in police station, free from presence of police. A second recorded confession was suppressed because the court found the defendant did not knowingly and intelligently waive his constitutional rights.
Final disposition of case: Defendant pled guilty to manslaughter and received 21 years.

Defense Counsel:
Jacob Amato, Jr.
901 Derbigny Street
Gretna, LA 70053
(504) 367-8181

9. Marlex Terminals, Inc. v. Parish of Jefferson, et al.
Civil Action # 247-364, 24th Judicial District Court, State of Louisiana
Division "A", Judge Louis G. DeSonier, Jr.

Trial on the summary judgment, December 18, 1980

Sole Counsel: G. Thomas Porteous, Jr.

Capsule summary of case: Petition for mandamus seeking a building permit. Complex litigation involving the rights of the parish government to deprive the applicant of a permit to construct a terminal.
Final Disposition: Mandamus granted. Parish was ordered to issue a permit.

Opposing Counsel:
Alvin J. Dupre, Jr.
Suite A, 2701 Houma Blvd.
Metairie, LA
(504) 454-1061

10. Eppling v. Jon-T Chemical, Inc.
Civil Action #205-643, 24th Judicial District Court, State of Louisiana

Division "B", Judge Zaccaria
Citations: 363 So.2d 1263

Trial on the summary judgment.

Sole Counsel: G. Thomas Porteous, Jr.
for Defendant

Capsule summary of case: Suit to collect for appraisal fees. Motion for summary judgment on behalf of my client Jon-T Chemicals alleging the doctrine of accord and satisfaction. The case was noteworthy because it was handled in an expedient manner via summary judgment.
Final Disposition: Summary judgment granted; Court of Appeals - Affirmed.

Opposing Counsel:
Thomas Loop
(deceased)

g. If you believe the responses 11(a) through 11(f) do not reflect your experience, please describe any experience which you consider the equivalent of trial experience.

Not applicable.

12. State the judicial office you now hold, and the judicial offices you have previously held, giving dates and the details, including the courts involved, whether elected or appointed, periods of service and a description of the jurisdiction of each of such courts with any limitations upon the jurisdiction of each court.

District Court Judge — January 1, 1985 - Present
State of Louisiana
~~Division A, 24th Judicial District Court~~

District Court Judge, Ad Hoc — August 24, 1984 - January 1, 1985
State of Louisiana
Division A, 24th Judicial District Court

I was first elected without opposition in 1984 for the term to commence January 1, 1985. At the request of the Louisiana Supreme Court, because the Division "A" seat was vacant, I was appointed to sit as the Ad Hoc Judge, effective August 24, 1984. I was re-elected without opposition in 1990 for the term commencing January 1, 1991.

The 24th Judicial District Court is a state trial court of general civil and criminal jurisdiction. However, juvenile proceedings and traffic violations are not included in our jurisdiction, other specific courts dispose of these two areas.

13. Attach ten of the most significant opinions you have written and give the citations if the opinions were reported, as well as citations to any appellate review of such opinions. As to each case for which an opinion is submitted, state the name, address and telephone number of counsel of each of the parties.

See attachment (my written trial court judgments and reasons)

Appellate cites and attorneys' names, addresses and telephone numbers are as follows:

(1) David Egudin v. Carriage Court Condominium, et al., 528 So.2d 1043, (La App 5 Cir., June 1988)

Leonard Levenson
427 Gravier St.
New Orleans, LA
(504)586-0066

John E. Seago
8126 One Calais Ave., Suite 2C
Baton Rouge, LA 70809
(504) 766-5805

Joseph F. D'Aquin, III
Christopher E. Lawler

4640 Rye St.
Metairie, LA 70006
(504)454-6808

(2) In the Matter of the Wrongful Death of Stanton J. Stark, #No. 86-CA-34 (La. App. 5 Cir., June, 1986) (Not designated for publication)

W. Paul Andersson
1100 Poydras St.
New Orleans, LA
(504)585-7500

Edward M. Gordon, III
2901 N. Causeway Blvd.
Metairie, LA
(504)832-4006

John R. Stark
(deceased)

(3) Edgar Carlsen v. Mehaffey & Daigle, Inc., et al., 519 So.2d 1187, (La. App. 5 Cir., Jan. 1988); 522 So.2d 1091, (La. 1988)

A. Remy Fransen, Jr.
814 Howard Ave.
New Orleans, LA
(504)522-1188

Stephen N. Elliott
1615 Metairie Road
Metairie, LA 70005
(504)834-2612

Robert M. Johnston
Pan American Life Ctr.
601 Poydras St.
Suite 2490
New Orleans, LA 70130

(504)581-2606

(4) Paul Fuller v. William Barattini, 574 So.2d 412, (La.App. 5 Cir., Jan.,1991)

Harry A. Burglass
1824 Williams Blvd.
Kenner, LA
(504) 469-2168

Gerald Wasserman
3850 N. Causeway Blvd.
Suite 630, II Lakeway Center
Metairie, LA 70002
(504)836-7300

J.B. Kiefer
1 Galleria Blvd.
Metairie, LA
(504) 835-6441

(5) Paul Hidding, et al. v. Dr. Randall Williams, et al., 578 So.2d 1192, (La.App. 5 Cir., April,1991)

Gregory F. Gambel
Byron J. Casey, III
Energy Centre - Suite 1810
1100 Poydras Street
New Orleans, LA 70163
(504)582-2112 & 582-2114

Robert Garrity
1905 Hickory Ave.
Harahan, LA 70123
(504)738-1111

Lloyd W. Hayes
Katherine B. Muslow

Suite 1000, 639 Loyola Ave.
New Orleans, LA 70113
(504)523-5100

(6) Karen Jewell, et al. v. The Berkshire Development et al., 612 So.2d 749, (La.App. 5 Cir. Dec.,1992)

James O. Manning
3108 David Drive
Metairie, LA 70003
(504)885-0400

Robert B. Acomb, Jr.
Richard D. Bertram
201 St. Charles Ave., 50th Floor
New Orleans, LA 70170
(504)582-8112 and 582-8334

Thomas G. Wilkinson
300 Huey P. Long Ave.
Gretna, LA 70054
(504)364-1892

L. Eades Hogue
Joseph C. Wilkinson, Jr.
Lawrence W. Dagate
21st Floor, Pan-American Life Center
601 Poydras Street
New Orleans, LA 70130-6097
(504) 584-9431, 584-9175, and 584-9135

(7) Thuan Ngoc Do v. Phuong Hoang Ngo, et al., 618 So.2d 1213, (La.App. 5 Cir., May,1993)

Robert Winn
Betty F. England
201 St. Charles Ave.
35th Floor

New Orleans, LA 70170
(504)582-1503

Philip C. Ciaccio
10555 Lake Forest Blvd.
New Orleans, LA
(504) 241-9150

(8) Betty Ann Dunn v. Keith L. Kreutziger, D.D.S., et al., 625 So.2d 672, (La.App. 5 Cir., Oct., 1993)

Charles F. Gay, Jr.
Cristina R.Wheat
4500 One Shell Square
New Orleans, LA 70139
(504)581-3234

Margaret Hammond
639 Loyola Ave.
New Orleans, LA
(504)581-6503

(9) Judy Watts on behalf of her minor daughter, Polly Watts v. J.C. Penny et al., App. # 93-CA-811, (La. App 5 Cir.,Feb.,1994) (Not designated for publication)

Patrick J. Sanders
3200 Ridgelake Drive, Suite 100
Metairie, LA 70002
(504) 834-0646

Daniel J. Markey, Jr.
5559 Canal Blvd.
New Orleans, LA 70124
(504)482-4566

(10) Kenneth Poche and Scott Key v. Bayliner Marine Corporation and Wagner Marine, Inc., 1994 WL 34062, ___ So.2d ___, (La. App. 5 Cir.,Feb.,1994)

Robert C. Lehman
1895 West Causeway Blvd.
Mandeville, LA 70448
(504)626-4509

Wade A. Langlois
Daniel A. Ranson
2304 Manhattan Blvd.
Harvey, LA 70058
P.O. Box 1910
Gretna, LA 70054
(504)362-2466

14. Have you ever held public office other than a judicial office? If so, give the details, including the offices involved, whether elected or appointed and the length of your service, giving dates.

Yes.

Special Counsel, Attorney General State of Louisiana	9/10/71 - 10/7/73
Assistant District Attorney Parish of Jefferson	2/1/73 - 8/6/84

Both were appointed positions.

15. Have you ever been an unsuccessful candidate for elective, judicial, or other public office? If so, give details, including dates.

No.

16. Have you ever been engaged in any occupation, business, or profession other than the practice of law or holding judicial or other public office? If so, give details, including dates.

No.

17. Are you now an officer or director or otherwise engaged in the management of any business enterprise?

No.

a. If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.

Not applicable.

b. Is it your intention to resign such positions and withdraw from any participation in the management of any of such enterprises if you are nominated and confirmed. If not, give reasons.

Not applicable.

18. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation of any federal law or regulation, county or municipal law, regulation or ordinance? If so, give details. Do not include traffic violations for which a fine of $100.00 or less was imposed.

No.

19. Have you, to your knowledge, ever been under federal, state or local investigation for possible violation of a criminal statute? If so, give particulars.

No.

20. Has a tax lien or other collection procedure ever been instituted against you by federal, state or local authorities? If so, give particulars.

No.

21. a. Have you ever been sued by a client or a party? If so, give particulars.

No.

b. Describe any claim or lawsuit which alleged an act or omission by you as a lawyer.

Not applicable.

c. Have you ever been sanctioned pursuant to Rule 11 or pursuant to any other federal, state or local rule?

No.

22. Have you ever been a party or otherwise involved in any other legal proceedings? If so, give the particulars. Do not list proceedings in which you were merely a guardian ad litem or stakeholder. Include all legal proceedings in which you were a party in interest, testified as a witness, were named as a co-conspirator or a co-respondent, and any grand jury investigation in which you figured as a subject, or in which you appeared as a witness.

Clark, et al v. Edwards, et al.
86-435, U.S. District Court, Eastern District of Louisiana

Suit challenging the method of election of judges in Louisiana. All judges were sued as nominal parties; we were sued in our official capacity. Resolution: Jefferson Parish, the 24th Judicial District Court, established sub-districts wherein an individual candidate runs, as opposed to running throughout the entire parish as was previously the procedure.

24th Judicial District Court, Indigent Defender Board & Sam Dalton v. State of Louisiana, Governor Roemer, et al.
413-728, 24th Judicial District Court
Declaratory judgment on constitutionality of LSA-R.S. 15:144(B)(D). All judges were sued, we were sued in our official capacity.

Resolution: Supreme Court issued a TRO and remanded to lower court. At the request of the Chief Justice and all interested parties, we have deferred further proceedings pending resolution by the legislature.

Sierra, et al v. State of Louisiana, Governor Roemer, et al
#405-429, 24th Judicial District Court
Constitutionality of LSA-R.S. 13:994(B)(1),(2),(3). This concerned a Louisiana statute which assessed a 2% fee on bail bonds. All judges were sued as nominal parties in their official capacity.

Pending.

Augustus, et al. v. State of Louisiana, Governor Roemer, et al
#90-4667 U. S. District Court, Eastern District of Louisiana

Constitutionality of LSA-R.S. 13:994(B)(1),(2),(3). This concerned a Louisiana statute which assessed a 2% fee on bail bonds. All judges were sued as nominal parties in their official capacity. This is virtually the same claim as Sierra, et al v. State of Louisiana, Governor Roemer, et al except it was filed in Federal court.

Injunction granted.

De Grange, et al v. 24th Judicial District Court
89-3535, U.S. District Court, Eastern District of Louisiana

All judges were sued in their official and individual capacity. Petitioners, Shurmaine De Grange and Ida Williams alleged discrimination. Both petitioners were former employees of the late Judge Lionel Collins. After his death, De Grange, his former law clerk, alleged she was not hired as a hearing officer in Domestic Court because of discrimination. Ida Williams, his former secretary, alleged discrimination because her services were not retained by the newly elected judge of the division.

Resolution: The matter was settled without any admission of liability or responsibility.

Grand Jury: I only appeared on one occasion. In approximately 1979, I appeared before a Federal Grand Jury as a witness. No indictment was returned. I believe the party being investigated was my client, Richard White. Those are the only particulars I can recall and I cannot locate any documentation on this matter.

23. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or, to your knowledge, been subject of a complaint to, any court, administrative agency, bar association, disciplinary committee, or other professional group? If so, give the particulars.

No.

24. With respect to your judicial service,

a. Have you participated in any proceeding in which you had a stock or other financial interest in one of the parties or in the matter in controversy? If so, give particulars.

No.

b. Is there a rule or custom in your court as to judges sitting on such cases? If so, state the rule or custom and whether or not you have complied with it.

The custom in our court would be for a judge to voluntarily recuse themselves. This is subject to all appropriate Louisiana civil and criminal laws. I have always complied with this custom.

c. Have you to the best of your knowledge and belief complied with applicable statutes and Cannons of the American Bar Association relative to such matters as were in force and applicable at the time? If not, give particulars.

Yes.

d. Have you ever received compensation from outside sources for services rendered (other than fees or expenses for lectures or teaching)? If so, give particulars.

No.

25. a. What is the present state of your health?

Excellent.

b. Have you in the last 10 years (i) been hospitalized due to injury or illness or (ii) been prevented from working due to injury or illness or otherwise incapacitated for a period in excess of ten days? If so, give particulars, including the causes, the dates, the places of confinement, and the present status of the conditions which caused the confinement or incapacitation.

Dr. A. Gustavo Colon was the treating physician. Skin cancer was resolved.
May 4, 1990 - Reconstruction of postauricular concha; procedure took place in doctor's surgical office.
October 7, 1989 - Excision of the preauricular area; elevation of pre-auricular flap and immediate expansion and rotation of flap.
Plastic surgery complete.

Dr. Robert E. Songy was treating physician. Diagnosis was hiatal hernia attack. Admitted to East Jefferson Hospital in January, 1988. There have been no recurrences.

c. Do you have a hearing or vision impairment or any other disability which might affect your ability to perform the duties of a trial or appellate judge? If so, please describe the disability and how your disability could be accommodated to allow you to perform the duties of a trial or appellate judge.

No.

d. When did you have your most recent general physical examination?

May, 1990

e. Are you currently under treatment for an illness or physical condition? If so, give details.

No.

f. Have you ever been treated for or had any problem with alcoholism

or any related condition associated with consumption of alcoholic beverages or any other form of drug addition or dependency? If so, give details.

No.

g. Have you ever been treated for or suffered from any form of mental illness? If so, give details.

No.

26. Furnish at least five examples of legal articles, books, briefs, or other legal writings which reflect your personal work. If briefs are submitted, indicate the degree to which they represent your personal work. If there are reported opinions relevant to a submitted brief, give the citation to or a copy of any relevant appellate opinion.

State v. Lane Nelson, This matter was before me on defendant's application for post conviction relief. Defendant was earlier found guilty, by a prior court, of first degree murder and sentenced to death. I set aside the death penalty because of ineffective assistance of counsel. Defendant subsequently plead guilty to first degree and he was resentence to life imprison, without capital punishment. (See attached judgement)

Marlex Terminal, Inc. v. Parish of Jefferson, et al., Civil Action # 247-364, 24th J.D.C. The brief represents my sole personal work. (See attached brief)

Jefferson Bar Association CLE Courses
Seminar on Criminal Law & Procedure.(See attached seminar material)

Jefferson Bar Association CLE Courses
1994 seminar on Medical Malpractice.(See attached seminar material)

Eppling v. Jon-T Chemicals, Civil Action# 205-643, 24th J.D.C., cited at 363 So.2d 1263. The brief represents my sole personal work.(See attached)

27. a. List all bar associations and professional societies of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

La. State Bar Association
4th & 5th Circuit Judges Association — President - 1991
Chief Judge - 24th Judicial district Court - 1992
American Bar Association
Jefferson Bar Association
American Judges Association
American Judicature Society
La. District Attorney's Association — President Assistant - 1974-75
District Attorney Section

b. List also chairmanships of any committees in bar associations and professional societies, and memberships on any committees which you believe to be of particular significance (e.g., judicial selection committee, committee of censors, grievance committee).

None.

c. Describe also your participation, if any, on judicial committees, in judicial conferences, and in sitting, by designation, as a temporary member of the court which reviews decisions of your court.

La. Summer School for Judges - Panelist
24th J.D.C. Indigent Defender Board Committee - Chairperson: 1993
24th J.D.C. Security Committee - Chairperson: 1991 through 1994

28. List all organizations and clubs other than bar associations or professional associations or professional societies of which you are or have been a member, including civic, charitable, educational, social and fraternal organizations, and give dates of membership, offices held and honors bestowed.

Chateau Estate Country Club — Honorary Member 1985-present

St. Clement of Rome School Men's Club (Parents' Club)	Member 1978-present President 1982-83
Phi Kappa Theta Fraternity	
Phi Alpha Delta Law Fraternity	
American Red Cross	
Brother Martin High School Parents' Club	Vice-President - 1989-90

29. List any honors, prizes, awards or other forms of recognition which you have received (including any indication of academic distinction in college or law school) other than those mentioned in answers to the foregoing questions.

Morality in Media Louisiana		1983
Finalist -	Robert Lee Tullis Moot Court Competition LSU Law School	1971
USL - Criminal Justice Program	Certificate of Appreciation Criminal Law and Procedure Update	January, 1980

30. Describe any pro bono or community service activities in which you have engaged.

As an Assistant District Attorney and as an Assistant Attorney General, I was precluded from indigent defender representation in criminal cases. Louisiana has NOLAC to assist indigent in civil matter.

To serve the community, since 1978, I continue to be active with the Recreation Department for the Parish of Jefferson in coaching and refereeing.

31. State any other information which may reflect positively or adversely on

you, or which you believe should be disclosed in connection with consideration of you for nomination for the Federal Judiciary.

None.

Gabriel Thomas Porteous, Jr.

April 27, 1994
Date

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24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 286-153 DIVISION "A"

DAVID EGUDIN

VS.

CARRIAGE COURT CONDOMINIUMS, ET AL

FILED
JUN 18 1987
DEPUTY CLERK

FILED: _____, 1987 DEPUTY CLERK: _____

JUDGMENT

This matter came to the court for hearing on the 18th day of February, 1987.

PRESENT: -LEONARD LEVENSON, Attorney for Plaintiff

JOSEPH D'AQUIN
EDWARD T. SUFFERN, JR.
JOHN SEAGO
CHRISTOPHER LAWLER
CONRAD MEYER, IV, Attorneys for Defendants

The Court, after hearing the pleadings, the evidence and the arguments and memoranda of law furnished by counsel, considering the law to be in favor of the plaintiff, David Egudin, and against the defendants, for the written reasons that will be subsequently rendered.

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of plaintiff, David Egudin, and against defendants, Carriage Court Condominiums, Behrvil Group, Inc., and Pierre Villere, finding fraud and unfair trade practices.

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of David Egudin and against Vilmark Brokers, Inc., Ann Zehentner and Bobbie Henderson finding that the said defendants breached their fiduciary duties as real estate agents as a result of their acts and omissions during the course of events that led to plaintiff's lose and that said defendants committed various acts violative of LSA-R.S. 37:1455.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants, Carriage Court Condominiums and Pierre Villere convey to petitioner, David Egudin, on or before July 18, 1987, the property described as condominium unit 202 of the Carriage Court Condominiums together with the undivided ownership interest in the common elements of paid condominium located at 2500 Houma Boulevard in the Parish of Jafferson, State of Louisiana.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in default of the passage of said act of sale by defendant there be judgment in favor of David Egudin and

[redacted]

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against defendants, Carriage Court Condominiums, Pierre Villere, and Behrvil Group, Inc., jointly, severally and in solido in the amount of THIRTY-THREE THOUSAND AND NO/100 ($33,000.00) DOLLARS as the amount required by FSLIC to release the unit from existing mortgages.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment for mental anguish, anxiety, humiliation and embarrassment in favor of David Egudin against the defendants, Carriage Court Condominiums, Pierre Villere, Vilmark Brokers, Inc., Behrvil Group, Inc., Ann Zehentner and Bobbie Henderson in the amount of TWO HUNDRED THOUSAND AND NO/100 ($200,000.00) DOLLARS jointly, severally and in solido.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment awarding attorney fees in favor of David Egudin and against defendants, Carriage Court Condominiums, Pierre Villere, Behrvil Group, Inc., Vilmark Brokers, Inc., Ann Zehentner and Bobbie Henderson, jointly, severally and in solido in the amount of TWENTY-SEVEN THOUSAND NINETY AND NO/100 ($27,090.00) DOLLARS together with legal interest from date of judicial demand and all cost of these proceedings.

JUDGMENT READ, RENDERED AND SIGNED this 18th day of June, 1987, at Gretna, Louisiana.

ON MINUTES
JUN 23 1987

JUDGE

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24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 286-153 DIVISION "A"

DAVID EGUDIN

VS.

CARRIAGE COURT CONDOMINIUMS, ET AL

FILED: _____, 1987 DEPUTY CLERK: _____

FILED JUL 17, 1987 DEPUTY CLERK

REASONS FOR JUDGMENT

This matter comes before the court on a petition for specific performance and damages. The evidence at trial revealed that petitioner paid the purchase price for condominium unit 202 of the Carriage Court Condominiums, on March 5, 1982, prior to the closing of the sale of the condominium unit.

Carriage Court Condominiums is a partnership in commendam. Behrvil Group is the general partner. Villere, the developer of Carriage Court Condominiums, is the sole shareholder and president of Behrvil Group. The majority of petitioner's personal dealings were through Ann Zehentner and to a lesser extent, Bobbie Henderson. These defendants worked as real estate agents for Vilmark Brokers, coordinating sales, on site for Carriage Court Condominiums. Henderson and Zehentner were under the direct supervision of Villere. The initial entering of the agreement to purchase and the payment of the purchase price of FORTY-SIX THOUSAND TWO HUNDRED NINETY-SEVEN AND 44/100 ($46,297.44) DOLLARS in full prior to closing was negotiated with Zehentner and her sponsoring broker, Henderson.

Plaintiff has never received title to the said unit from Carriage Court Condominiums. Title could not be conveyed because of mortgages with Audubon Federal. Audubon Federal subsequently foreclosed on Carriage Court Condominiums. Audubon Federal thereafter was placed in receivership by the Federal Home Loan Bank Board. The FSLIC is named as receiver.

It was stipulated at trial that plaintiff is entitled to specific performance There is also a stipulation by Mike Hill of FSLIC that plaintiff could obtain release of this unit by payment of THIRTY-THREE THOUSAND AND NO/100 ($33,000.00) DOLLARS.

It was revealed at trial that plaintiff's present predicament was brought about by an intertwining web of fraud, mishandling, ineptitude and inexperience.

The court found plaintiff, David Egudin, who was of foreign origin, was unfamiliar with real estate transactions and totally reliant on the representations of Zehentner and Henderson.

Plaintiff testified that in December of 1981 he looked at unit 202 and placed ONE HUNDRED AND NO/100 ($100.00) DOLLARS down to hold the unit. Then on December 21 he executed P-7 and P-8. He testified that Zehentner told him he had to pay TWO THOUSAND AND NO/100 ($2,000.00) DOLLARS in January and TWO THOUSAND AND NO/100 ($2,000.00) more when he moved in. Plaintiff affirmed that in March of 1982 Zehentner, then, approached him regarding payment in full of the purchase price. On March 23, 1982, plaintiff gave Henderson a check for the purchase price and executed P-10. He testified that he, at no time, read the document and that neither Henderson nor Zehentner asked if he understood what they meant. He further testified that she never said the check was going to the developer/owner.

Both Henderson and Zehentner testified that they have never been involved in this type of transaction before. Although Henderson testified that she told plaintiff that she was giving the money to the developer/owner, the court chooses to believe plaintiff's testimony that she did not, and finds Egudin to be the more credible witness.

Henderson also testified that she did not think it her concern whether the property was mortgaged or not.

Pierre Villere testified that Zehentner knew there was a mortgage on the property when she sold unit 202.

The offending clauses are contained in Section 1. A. of the contracts.

In Exhibit 8A, the contract reads in pertinent part:

> A. "Upon Seller's acceptance of Purchaser's offer, Purchaser will deposit with Seller an amount of $2,280.47 - TWO THOUSAND TWO HUNDRED EIGHTY DOLLARS AND 47 CENTS. This deposit shall be placed in escrow by Seller in any Bank in the New Orleans area...."

Paragraph 1. A. reads in pertinent part in Exhibit 10:

> "Upon Seller's acceptance of Purchaser's offer, Purchaser will deposit with Seller cash in the amount of $45,609.50 FORTY-FIVE THOUSAND SIX HUNDRED NINE DOLLARS AND FIFTY CENTS."

The sentence stating: "This deposit shall be placed in escrow by Seller in any Bank..." is specifically deleted in Exhibit 10. The court finds that neither Zehentner nor Henderson pointed out this deletion in the contract.

The court feels that Henderson just blindly turned over plaintiff's check, never inquiring as to why ONE HUNDRED (100%) PERCENT of the purchase price was being required from plaintif, the only person required to pay in advance the full amount. She was completely unconcerned about how the caretaker of the money would keep safe these funds. Her behavior was at best unprofessional and clearly a violation of LSA-R.S. 37:1455.

Defendants argue that 37:1455(4) provides that the party can agree not to escrow the funds. The court gives no weight to this argument for two reasons. First, the contract is silent as to escrow and the statute states the party has to agree in writing. And second, the court finds the agent confessed ignorance as to what to do when a person pays in full prior to act of sale, and their claim that plaintiff agreed such an escrow was not required, are incongruous.

The court finds that both Zehentner and Henderson owed a fiduciary duty to plaintiff that was breached and was a proximate cause of plaintiff's damages.

As to the defendant, Pierre Villere, it is clear to the court that misrepresentations were made with the intent to obtain an unjust advantage over plaintiff which caused his loss and that Mr. Villere was guilty of unfai trade practices which were immoral, oppressive, unscrupulous and harmful to plaintiff.

The court is of the opinion that Mr. Villere's actions were deceptive from the beginning. The check was immediately deposited in his operating account and used for the routine operations of Carriage Court Condominiums. The money was never escrowed; he knew a partial release was not available from Audubon Federal and that he could not go to a closing until he had sold a sufficient number of units.

After plaintiff insisted on some documentation, he reluctantly presenced him with a worthless document acknowledging his title. This document was only recorded due to plaintiff's enterprise. Villere further compounded his fraud by using the unit for cross collateralization on other units (Exhibit P-18). When informed by Peter S. Michell as to the cloud on his title, he assured him he could get it removed. He compounded his fraud again with his attempt to send his heretofore gullible confederate to sign additional papers to remove the acknowledgment from the public records (Exhibit 13, 14 and 15). It was at this point, Ann Zehentner abandoned her role as double agent and enlightened plaintiff of his predicament.

The court is convinced that the negligence of the real estate agents and the fraud of Mr. Villere caused emotional injury to plaintiff. Louisiana Courts have recognized that emotional injury is a separate element of damages for which recovery is available when the evidence establishes both the existence of such injury and its causal connection to defendant's negligence. Dousson v. South Central Bell, 429 So. 2d 466.

[redacted] 2/6/17

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Further, damages for mental anquish and attorney fees are awarded under Louisiana Unfair Trade Practice Act.

Both defendants, Zehentner and Henderson, were experienced real estate agents being involved in hundred of acts of sale, admitted that they found this situation unusual, had never been involved in such a transaction, yet did nothing as agents for plaintiff to protect his interest or advise him of this peculiarity.

The court finds the defendants solidarily liable for their actions. Even though obligations arise from separate acts or for different reasons, defendants are solidarily liable where they are obligated to do the same thing. Perez v. State Farm, 459 So. 2d 218. Joiner v. Diamond M. Drilling, 688 F. 2d 256.

As to damages, it has been stipulated that plaintiff is entitled to specific performance. It is also stipulated that the sum of money necessary to release the property from its present encumbrances by the FSLIC is THIRTY-THREE THOUSAND AND NO/100 ($33,000.00) DOLLARS.

As to the award for mental anquish, it is clear to the court that plaintiff is entitled to an award for his mental suffering because of the intentional fraud by Villere and the negligence of the real estate agents who were employed by him.

Mr. Egudin presently works at the Time Saver, working the 11 to 7 shift. He testified that he only clears TWO HUNDRED AND NO/100 ($200.00) DOLLARS a week. He has paid TEN THOUSAND ONE HUNDRED SIXTY-SIX AND 74/100 ($10,166.74) DOLLARS in litigation cost and TWENTY-SEVEN THOUSAND NINETY AND NO/100 ($27,090.00) DOLLARS in attorney fees are presently outstanding. Mr. Egudin testified that he used his lifesavings to purchase the home. Because of his problems in loosing his home and lifesavings, he took a bottle of valiums in an attempt to commit suicide. There is no question in the court's mind that plaintiff's mental anquish was extremely severe. The court accordingly awards TWO HUNDRED THOUSAND AND NO/100 ($200,000.00) DOLLARS for mental pain and anquish.

As to attorney's fees, Mr. Levenson has testified as to the number of hours he has in this case and the court finds an award of TWENTY-SEVEN THOUSAND NINETY AND NO/100 ($27,090.00) DOLLARS to be reasonable under the circumstances.

Gretna, Louisiana, this 17th day of July, 1987.

J U D G E

[redacted]

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PORT000000131

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 263-171 DIVISION "A"

IN THE MATTER OF THE
WRONGFUL DEATH OF STANTON J. STARK

FILED
APR 23 1985
DEPUTY CLERK

FILED:_____, 1985 DEPUTY CLERK:_____

JUDGMENT

This case having been duly tried before and submitted to the jury on the 22nd of March, 1985, and the jury having this day returned a verdict in the form of interrogatories as follows:

Pursuant to Code of Civil Procedure Art. 1916(2), when a jury returns a special verdict, the judge must sign a judgment in accordance therewith, therefore, in conformance with the verdict of the jury herein,

IT IS ORDERED, ADJUDGED AND DECREED that the verdict of the jury be and it is hereby made the judgment of this court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the expert fees in this matter are hereby set at TWO HUNDRED FIFTY AND NO/100 ($250.00) DOLLARS per expert witness.

IT IS FURTHER ORDERD, ADJUDGED AND DECREED that the expert fees and cost of these proceedings are to be divided between plaintiffs and defendant in proportion with the degree of fault attributed to the respective parties.

Pursuant to Code of Civil Procedure Art. 1812(D) when a jury returns a judgment pursuant to a special verdict, the court shall then enter judgment in conformity with the jury's answers to these special questions and according to applicable law.

The court finds the applicable law in the instant matter concerning the dollar figure due in a comparative fault situation is Bell v. Jet Wheel Blast, (La. 1985) 462 So. 2d 166. There the court stated that the adoption of a system of comparative fault should entail the merger of assumption of risk into the general scheme of assessment of liability in proportion to fault. A plaintiff's claim for damages is no longer barred because of assumption of the risk. The net effect of article 2323, as amended, is to prevent the courts from applying any defense more injurious to a damage claim than comparative negligence. Presumably, the doctrine of last clear chance, like that of assumption of the risk, is also merged into the general scheme of comparative negligence under the rational of Bell, supra.

Accordingly, plaintiffs' recovery is reduced in proportion to the fault attributed to the decedent, Stanton J. Stark.

In determining what dollar figure to place on the jury's special verdict, the court must reduce the damage award by TEN THOUSAND AND NO/100 ($10,000.00) DOLLARS which is the amount State Farm Mutual Automobile Insurance Company, as the insurer of Stephen Douglas, has already paid to plaintiffs. The fact of payment has been stipulated by all parties, and GEICO, as UM carrier, is entitled to a credit for monies paid by the primary liability coverage.

Pursuant to the verdict of the jury finding,

Stanton Stark	56% fault
Stephen Douglas	44% fault

and awarding,

Mrs. Lynn Stark	$26,333.00
John R. Stark	$21,750.00,

the court makes the following calculations:

Mrs. Lynn Stark	$26,333.00 X 44% = $11,586.52	
John R. Stark	$21,750.00 X 44% = $ 9,570.00	
Mrs. Lynn Stark	$11,586.52	
	- 5,000.00	(½ of $10,000.00 credit, previously paid by State Farm)
	$ 6,586.52	
John R. Stark	$ 9,570.00	
	- 5,000.00	(½ of $10,000.00 credit, previously paid by State Farm)
	$ 4,570.00	

IT IS ORDERED, ADJUDGED AND DECREED that said verdict be and it is hereby made the judgment of this court and accordingly the defendant, Government Employees Insurance Company, is hereby condemned to pay to plaintiff, Mrs. Lynn Stark, the sum of SIX THOUSAND FIVE HUNDRED EIGHTY-SIX AND 52/100 ($6,586.52) DOLLARS and to plaintiff, John R. Stark, the sum of FOUR THOUSAND FIVE HUNDRED SEVENTY AND NO/100 ($4,570.00) DOLLARS with legal interest from date of judicial demand.

JUDGMENT READ, RENDERED AND SIGNED this 23rd day of April, 1985, at Gretna, Louisiana.

JUDGE

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 263-171 DIVISION "A"

IN THE MATTER OF THE

WRONGFUL DEATH OF STANTON STARK

FILED: _____, 1985 DEPUTY CLERK: _____

FILED
JUL 15 1985
DEPUTY CLERK

JUDGMENT

This cause having been submitted to the court on motion of plaintiffs for a judgment notwithstanding the verdict to amend the jury's attribution of liability, and damages, and/or additur, and a motion for a new trial.

Considering the law and evidence, the court finds that there is no basis in law or fact to support the conclusion of the jury as to liability and damages.

IT IS ORDERED, ADJUDGED AND DECREED that the verdict of the jury in the above entitled and numbered cause be, and it is hereby set aside, and a judgment notwithstanding the verdict is granted as to liability and damages as follows:

Steven Douglas is found to be ONE HUNDRED (100%) PERCENT at fault; that there be judgment in favor of plaintiff, John Stark, in the amount of FORTY THOUSAND AND NO/100 ($40,000.00) DOLLARS, and plaintiff, Mrs. Lynn Stark, in the amount of FORTY THOUSAND AND NO/100 ($40,000.00) DOLLARS, and against the defendants, Steven Douglas and Government Employees Insurance Company, with legal interest from date of judicial demand, and all cost of these proceedings.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the motion for a new trial be conditionally granted if the court's ruling on the judgment notwithstanding the verdict is reversed or vacated.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the motion for additur be denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be expert fees assessed against the defendants, Steven Douglas and Government Employees Insurance Company, in the amount of TWO HUNDRED FIFTY AND NO/100 ($250.00) DOLLARS per expert.

JUDGMENT READ, RENDERED AND SIGNED this 15th day of July, 1985, at Gretna, Louisiana.

ON MINUTES
JUL 16 1985

J U D G E

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 263-171 DIVISION "A"

IN THE MATTER OF THE

WRONGFUL DEATH OF STANTON J. STARK

FILED: _____, 1985 DEPUTY CLERK: _____

FILED
JUL 15 1985
DEPUTY CLERK

REASONS FOR JUDGMENT

In respect to the judgment notwithstanding the verdict, the court finds the facts of the case warrant the following:

Viewing the evidence most favorable to the party against whom the motion is made, the court finds that defendant failed to prove that plaintiff was in any way at fault in becoming an "outrider" on the vehicle, voluntarily. All evidence preponderates to the finding that plaintiff found himself in a position of imminent peril without sufficient time to consider and weigh all circumstances or the best means that may be adopted to avoid the impending danger.

There was no evidence presented which could substantiate a finding that the emergency was brought about by any alleged fault on the part of Stanton J. Stark.

Tim Talbot testified that when Stanton got to the car the lights and engine were off. Norman McKay testified that the car was stopped when Stanton was on the threshold.

It is clear from the testimony of those present who could recall the particulars of how Stanton came to be on the auto that Stanton was positioned between or/on the threshold and the open car door when the vehicle began to move. The driver did not use reasonable care in taking on its passenger; Stanton had every right to assume that the vehicle would not move until he was safely away or inside the vehicle. It is also clear that once the vehicle did pull forward Stanton was on the horns of a dilemma that only hindsight and cool reflection could have possibly provided a safe escape. The law clearly does not hold plaintiff to this standard of conduct. See Carter v. City Parish Government 423 So. 2d 1080 (La. 1982).

Viewing the evidence most favorably to the party against whom the motion is made, the verdict is so unreasonable that it would be unconscionable to permit it to stand. The jury clearly held Stanton to a higher standard of conduct than the law demanded.

It is clear from the evidence that at the beginning of the scenario Stanton Stark was nothing more than a pedestrian, resting on the Douglas vehicle while observing the activity of the occupants. Stanton then involuntarily became an "outrider" on the vehicle because of the sudden and unexpected movement of the car.

The court is of the opinion that Stanton had every legal right to assume that there would be no movement of the vehicle until he was safely away from, or inside of, the vehicle.

Under these circumstances, the court concludes that Steven Douglas breached the duty he owed to plaintiff to exercise reasonable care in the operation and control of his vehicle and the risk of plaintiff's injury was within the scope of that duty. Inasmuch as Steven Douglas' negligent conduct was a cause in fact of the accident and resulting injuries, he is liable to plaintiff.

The evidence further showed Steven Douglas drove his car in an erratic fashion and that once he set his car in motion, Stanton Stark was left with no other recourse but to just hang on for dear life.

The Louisiana Supreme Court recently ruled on the duty a guest passenger owes himself in Smith v. Travelers Ins. Co., 430 So. 2d 55 (La. 1983).

In the Smith case the defendant turned into a designated parking area and came to a complete stop. With the radio playing very loud, he looked only to his left, put the car in reverse and failed to notice that the interior dome light came on when plaintiff attempted to exit the car. As she alighted, defendant suddenly and without warning put the car in reverse and started backing up, causing her to be thrown to the ground and struck by the auto door. As a result of the injury, plaintiff was paralyzed. Defendants asserted the defense of contributory negligence. The court in the Smith case ruled:

> "Contributory negligence is a defense to a tort suit and it is incumbent upon the defendant to prove that the plaintiff was contributorily negligent. Tucker v. Lirette, 400 So. 2d 647 (La. 1981). A guest passenger owes a duty to herself to ascertain that she can safely disembark from an automobile. Contrary to the contention of the defendants and the instruction given by the trial judge to the jury in the instant case, this duty does not encompass a responsibility to notify the driver of a stopped vehicle of her intention to alight from the vehicle. Our review of the record reveals nothing which would indicate that plaintiff could not have made a safe exit absent Krushin's negligent conduct."

The court finds in the instant case that Stanton Stark did not breach any duty owed to himself and finds the jury was clearly wrong in finding Stanton Stark FIFTY-SIX (56%) PERCENT at fault and assesses ONE HUNDRED (100%) PERCENT of the fault to Steven Douglas.

As to the jury's finding that Stanton Stark assumed the risk of injury, the court likewise is of the opinion that the jury's verdict is without any reasonable basis and clearly wrong. Defendants have previously filed a motion to enter judgment in accordance with the jury interrogatories. In determining the dollar figure to be placed on the jury verdict, this court held that the adoption of a system of comparative fault entailed the merger of assumption of risk into the general scheme of assessment of liability in proportion to fault. Therefore, the net effect of Article 2323, as amended, is to prevent the courts from applying any defense more injurious to a damage claim than comparative negligence. See Bell v. Jet Wheel Blast, (La. 1985) 462 So. 2d 166.

Aside from the court's opinion that defendants aren't legally entitled to the defense of assumption of the risk and viewing the evidence most favorable to defendant, the court finds that the facts of the instant case do not warrant a finding of assumption of the risk and the jury's finding on this point is without a reasonable basis in fact.

In accordance with Article 1811 of the Code of Civil Procedure, a judgment notwithstanding the verdict may be granted on the issue of liability or on both issues.

The court is of the opinion that the instant case warrants a judgment notwithstanding the verdict on both the issue of liability and damages.

The court is convinced that, under the evidence of this case, reasonable minds could not differ as to the fact that a much higher award of damages was justified.

The present award is clearly out of line with the evidence presented in the case and other awards. Other awards, while not used for achieving uniformity, serves as an aid in determining whether a particular award is so out of line that reasonable minds could not differ as to the amount of damages.

The court therefore grants plaintiffs' motion for judgment notwithstanding the verdict, and the verdict of the jury awarding John Stark, TWENTY-ONE THOUSAND SEVEN HUNDRED FIFTY AND NO/100 ($21,750.00) DOLLARS and Lynn Stark TWENTY-SIX THOUSAND THREE HUNDRED THIRTY-THREE AND NO/100 ($26,333.00) DOLLARS is set aside, and the court reforms the jury verdict increasing it to John Stark, FORTY THOUSAND AND NO/100 ($40,000.00) DOLLARS and Lynn Stark, FORTY THOUSAND AND NO/100 ($40,000.00) DOLLARS.

As to the motion for new trial, under the provisions of Code of Civil Procedure Article 1811 (C.)(1), the court should rule on the motion for a new trial even though the motion for a judgment notwithstanding the verdict is granted. The court, therefore, determines that should the judgment notwithstanding the verdict be thereafter vacated or reversed, the motion for a new trial is conditionally granted for the reasons heretofore mentioned in the granting of the judgment notwithstanding the verdict and because the verdict is too unreasonable to permit it to stand.

As to the motion for additur the court finds it necessary to rule on said motion in light of the fact that the court has granted a judgment notwithstanding the verdict as to damages.

Gretna, Louisiana, this 15th day of July, 1985.

JUDGE

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24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 285-171 DIVISION "A"

EDGAR CARLSEN

VS.

MEHAFFEY & DAIGLE, INC., ET AL

FILED:_____, 1987 DEPUTY CLERK:_____

JUDGMENT

This cause came for hearing on a motion for a new trial on the 19th day of December, 1986.

PRESENT: REMY FRANSEN, Attorney for Plaintiff
ROBERT M. JOHNSTON, Attorney for Defendants
ALISON E. ROBERTS, Attorney for Defendants

Considering the law and evidence, the court finds that there is no basis in law or fact to support the conclusion of the jury as to the award of general damages,

IT IS ORDERED, ADJUDGED AND DECREED that the verdict of the jury in the above entitled and numbered cause be and it is hereby set aside and a judgment notwithstanding the verdict is granted as to the award of general damages in jury interrogatory number 7 as follows:

That there be judgment in favor of Edgar Carlsen in the amount of ONE HUNDRED FIFTY THOUSAND AND NO/100 ($150,000.00) DOLLARS.

IT IS ORDERED, ADJUDGED AND DECREED that the original judgment of the court and all other jury interrogatories still stand in effect.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the motion for a new trial as to damages be conditionally granted if the court's ruling on the judgment notwithstanding the verdict is reversed or vacated.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the motion for additur be denied.

JUDGMENT READ, RENDERED AND SIGNED this 22nd day of January, 1987, at Gretna, Louisiana.

JUDGE

ON MEMITTER
JAN 23 1987

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 285-171 DIVISION "A"

EDGAR CARLSEN

VS.

MEHAFFEY & DAIGLE, INC., ET AL

FILED: _____, 1987 DEPUTY CLERK: _____

REASONS FOR JUDGMENT

This cause has been submitted to the court on motion of plaintiff for a judgment notwithstanding the verdict to amend the jury's award as to general damages, and/or additur and a motion for a new trial.

The court is of the opinion that the instant case warrants a judgment notwithstanding the verdict on the issue of general damages.

The court is convinced that under the evidence of this case reasonable minds could not differ as to the fact that a much higher award for general damages was justified.

The present award is clearly out of line with the evidence presented in the case and other awards. Other awards, while not used for achieving uniformity serves as an aid in determining whether a particular award is so out of line that reasonable minds could not differ as to the amount of damages.

In a recent case, Fifth Circuit Court of Appeals, Riley v. Winn Dixie of Louisiana, Inc., 489 So. 2d 931, the court found a jury award of THIRTY THOUSAND AND NO/100 ($30,000.00) DOLLARS for general damages for a lumbar laminectomy to be inadequate and found the low range for such an injury to be ONE HUNDRED THOUSAND AND NO/100 ($100,000.00) DOLLARS. The court there considered the following cases: Johnson v. Wicks, 356 So. 2d 469 (1st Cir. 1977) - ONE HUNDRED THIRTEEN THOUSAND TWENTY-FOUR AND NO/100 ($113,024.00) DOLLARS; Williams v. City of New Orleans, 433 So. 2d 1129 (4th Cir. 1983) - ONE HUNDRED TWENTY-FIVE THOUSAND AND NO/100 ($125,000.00) DOLLARS; Abshire v. Dubois, 422 So. 2d 611 (3rd Cir. 1982) ONE HUNDRED THOUSAND AND NO/100 ($100,000.00) DOLLARS.

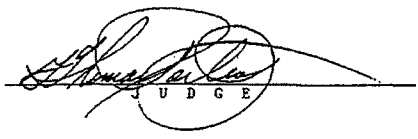
The plaintiff in the instant case has undergone two surgical interventions as a direct result of the accident.

Plaintiff suffered a ruptured disk as a result of the accident for which he had to undergo a fusion. As a complication of that surgery, plaintiff also had to undergo a mastectomy as a result of a breast growth which resulted from the use of a drug prescribed after his surgery.

The court therefore grants plaintiff's motion for judgment notwithstanding the verdict, and the verdict of the jury awarding Edgar Carlsen FIFTY THOUSAND AND NO/100 ($50,000.00) DOLLARS is set aside, and the court reforms the verdict as to general damages to ONE HUNDRED FIFTY THOUSAND AND NO/100 ($150,000.00) DOLLARS.

The court further finds that a new trial should be conditionally granted as to the issue of damages if the court's ruling on the judgment notwithstanding the verdict is reversed or vacated because the jury's award is clearly contrary to the law and evidence and presents good grounds to the court for a new trial in the interest of justice.

Gretna, Louisiana, this 22nd day of January, 1987.



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24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 321-881 DIVISION "A"

A. PAUL FULLER and/or UNITED TALENT ASSOCIATES, INC.

VS.

WILLIAM BARATTINI

FILED:_____, 1989 DEPUTY CLERK:_____

JUDGMENT

This matter came on for hearing on December 16, 1987, January 7, 1988, and March 18, 1988, and was taken under advisement for plaintiff to submit memos.

PRESENT: HARRY BURGLASS, Attorney for Plaintiff

J. B. KIEFER, Attorney for Defendant

The Court, after hearing the pleadings, the evidence, and the arguments and memoranda of law furnished by counsel, considering the law and evidence to be in favor of plaintiff, for the written reasons attached hereto,

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of plaintiff, A. Paul Fuller, and against the defendant, William Barattini, in the sum of FIFTY-EIGHT THOUSAND EIGHT HUNDRED FIFTY-SIX AND 50/100 ($58,856.50) DOLLARS with legal interest from date of filing until paid and for all cost of these proceedings.

JUDGMENT READ, RENDERED AND SIGNED this 29th day of January, 1990, at Gretna, Louisiana.

J U D G E

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 321-881 DIVISION "A"

A. PAUL FULLER and/or UNITED TALENT ASSOCIATES, INC.

VS.

WILLIAM BARATTINI

FILED:_____, 1989 DEPUTY CLERK:_____

REASONS FOR JUDGMENT

The pertinent facts are these: William Barattini is the owner of property located at 3116 North Arnoult Road, Metairie, Louisiana.

On October 21, 1982, a written lease was executed by Barattini, as Lessor, and A. Paul Fuller, as Lessee. The lease provided for a five year primary term beginning December 1, 1982. The lessee paid TWELVE THOUSAND AND NO/100 ($12,000.00) DOLLARS pursuant to the terms of this lease, constituting the first month's rental and the deposit.

Mr. Fuller's purpose was to open a Ladies Club where an all male cast could perform exclusively for women. He was apparently impressed by the Fat City location and expended a lot of time and effort to establish the club as a going concern.

At the outset, the court wishes to make note that the business the plaintiff wanted to establish might appear at first blush to be morally reprehensible to some. In fact, in defendant's post trial memorandum, Barattini, after the fact, referred to himself as an "honest, hard-working person" and plaintiff's business as "the operation of such an offensive and obnoxious business as a Ladies Night Club/ male strip joint". The court is unimpressed by such platitudes and condemnations. In the instant case, it is not the court's duty to sanction or censure the parties' morality. The Court has before it a lease dispute.

It is the decision of this Court that the defendant, William Barattini, breached the contract of lease with the plaintiff, A. Paul Fuller, and that plaintiff is entitled to a recession of the lease agreement and damages.

The lessee made it clear to the lessor that in order to open the establishment he envisioned, he would need adequate parking. It is the opinion of this court that plaintiff made known to defendant the purpose of the establishment and what, to him, appeared to be a problem with parking.

It was clear to the court that Lessor's over-zealousness to lease his location led him to compromise negotiations in the instant matter. The Court believes that defendant represented to plaintiff that parking was not going to be a problem, nor was it going to be a problem to obtain a building permit. The Court concludes that plaintiff placed heavy reliance on these statements and would not have entered into a lease at this location but for these assertions. The Court finds that lease was void from its inception because of error occasioned by the failure of the Lessor to disclose the true status of the property and because of plaintiff's induced and mistaken belief that there were no obscacles or serious problems to remedy before a permit could be obtained.

The Court is convinced that William Barattini was fully aware of the restrictions and impediments to obtaining a building permit and made representations to the plaintiff that did not come to fruition.

The Court finds that the defendant did orally make a commitment to plaintiff to obtain the necessary building permits. The Court bases its belief on a number of factors: First, the Court finds Mr. Fuller to be a credible witness and is convinced that Barattini made the representation to him that he would obtain the permits. Mr. Barattini built the improvements at Kelly Lynn's, another business, at the same location and was aware of the parking variances needed in that case to get the permits.

The area leased to plaintiff was a shell. Both parties wanted the interior finished. Defendant's constant involvement in the proposed club was evident from the testimony. The plans even called for a 7' x 9' office for his use. He knew of the improvements that were being installed; the lighting, the stage, the bar, and the plumbing. The defendant testified that he told plaintiff that he was going to cut a hole in the sidewalk so they could get to the lot next to his.

The Court believes that defendant succeeded in inducing plaintiff to continue to make improvements to the property until that point in time when the electrical and plumbing work could not be closed in for lack of inspection, which of course could not occur since they needed a building permit. Accordingly, the Court finds the defendant liable for the expenses the plaintiff incurred up until that point in time.

In Guaranty Savings Assurance Co. v. Uddo, 386 So. 2d 670, the Court stated that where substantial evidence indicated that the principal cause or motive for the Lessee's contracting of the Lessor's premises was established

to be a lounge, and that the Lessor was well aware of the Lessee's intentions and of the fact that zoning was inconsistent with the Lessee's plans, the Lessee was entitled to rescind the contract of lease because of his inability to obtain a permit.

Based on the jurisprudence in Guaranty, supra, the Court finds that lease in question should be rescinded.

In light of the Court's decision to rescind the lease, the defendant's claim for past due rent is found to be of no merit.

The claim for past due rent is specious for a number of reasons. The Court is of the opoinion that, in the interim, while this chaos was transpiring, there was a verbal understanding that no rent would be due. The Court also believes that, had it not rescinded the lease, there was a provision in the lease that contemplated "delayed possession", wherein rent would not be due.

As to damages, the plaintiff is evidently entitled to the return of the deposit and the first month's rent, which represents TWELVE THOUSAND AND NO/100 ($12,000.00) DOLLARS. Additionally, plaintiff is also entitled to the money he expended in promoting his enterprise together with the expenses he incurred in building the lounge.

The records kept of this aborted enterprise are, at best, incomplete. As is evident by the newspaper ads introduced at trial by defendant, there were some advertising costs expended to promote the club. However, there are no invoices or checks to show what sums were expended; therefore, the Court cannot award this as an item of damage. Ploding through plaintiff's exhibits, the Court finds the following damages were incurred due to defendant's breach of the lease:

Creative Lighting	Dec. 29, 1982	$14,000.00
Dixie Sign Deposit	Nov. 3, 1982	689.00
Nolen Enterprises	Nov. 18, 1982	27,255.00
Wayne Wiggins (Electronics)	Dec. 5, 1982	175.00
	Dec. 7, 1982	50.00
	Dec. 10, 1982	169.00
Stauffer's Custom Wood Works	Nov. 3, 1982	611.00
	Nov. 12, 1982	522.50
	Nov. 23, 1982	1,265.00
	Dec. 2, 1982	855.00
	Dec. 10, 1982	1,017.50
	Dec. 16, 1982	247.50

The total of this list and the return of the first month's rent and deposit equals $58,856.50.

Plaintiff testified, as did another witness, that he removed approximately ONE HUNDRED THOUSAND AND NO/100 ($100,000.00) DOLLARS in sound and lighting

equipment, therefore, the only loss in this regard was the cost of labor to creative lighting which is listed above. The plaintiff also testified that at the time the project was shut down it was 75-80% complete.

Plaintiff claims that his loss of profits were enormous in this case. George Laibe testified for plaintiff and stated he was a consultant and producer of TV programing. He stated that he had various correspondence with plaintiff and wanted to acquire the TV and video rights. He testified that the project's concept began to break down and, then, plaintiff kept changing the opening date for the club. The idea, initially, was to do a pilot program and footage for one hour and one half hour programs.

All of these plans have been seemingly abandoned. Plaintiff testified that his credibility with his investors was damaged and he did not have the money to seek a new location.

As to this claim for loss of profits, the Court finds that any award of this nature would be too speculative. The enterprise did not get off the ground. It is impossible for the Court to guess at what profits there was to be made.

The plaintiff also claimed expenses of insurance, but failed to produce any evidence of that loss. Therefore no award is made for that item.

As a general rule, attorney's fees are not due and owing a successful litigant unless specifically provided by contract or by statute. The law does not provide for an award of attorney fees in a suit for breach of contract against a person in good faith.

The Court is of the opinion that when defendant represented that he would obtain the permits he had no ill intentions, he merely over estimated his abilities and under estimated the problems that resulted.

Therefore, plaintiff cannot recover the attorney's fees incurred in this suit or his prior suit to obtain permits.

Accordingly, the Court awards the sum of FIFTY-EIGHT THOUSAND EIGHT HUNDRED FIFTY-SIX AND 50/100 ($58,856,50) DOLLARS to plaintiff, A. Paul Fuller.

Gretna, Louisiana, this 19th day of January, 1990.

J U D G E

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 355-201 DIVISION "A"

PAUL HIDDING, ET AL

VERSUS

DR. RANDALL A. WILLIAMS

FILED: _____, 1990 DEPUTY CLERK: _____

JUDGMENT

This matter came to trial on May 1, 1990.

PRESENT: GREGORY F. GAMBEL, BYRON J. CASEY, III, and ROBERT T. GARRITY, JR., Attorneys for Plaintiffs, RUBINELL HIDDING, individually and as provisional administratrix of the estate of PAUL HIDDING, RUSSELL HIDDING and GENE HIDDING

LLOYD W. HAYES, Attorney for DR. RANDALL A. WILLIAMS and THE HARTFORD FIRE INSURANCE COMPANY

After hearing the pleadings, evidence and arguments of counsel, the Court considering the law and evidence to be in favor of the plaintiffs, Rubinell Hidding, individually and as provisional administratrix of the estate of Paul Hidding, Russell Hidding and Gene Hidding for written reasons assigned.

IT IS ORDERED, ADJUDGED AND DECREED that the Peremptory Exception of Prescription filed by the defendants, Dr. Randall A. Williams and The Hartford Fire Insurance Company, is denied.

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of plaintiff, Rubinell Hidding, individually, for the loss of her consortium claim in the sum of THIRTY-FIVE THOUSAND AND NO/100 ($35,000.00) DOLLARS, and in favor of plaintiff, Rubinell Hidding as provisional administratrix of the estate of Paul Hidding in the sum of TWO HUNDRED FIFTY THOUSAND AND NO/100 ($250,000.00) DOLLARS, and medical expenses in the sum of TWENTY-TWO THOUSAND SIX AND 50/100 ($22,006.50) DOLLARS, with legal interest from the date of filing until paid, along with all costs of these proceedings.

JUDGMENT READ, RENDERED AND SIGNED this 16th day of July, 1990, at Gretna, Louisiana.

JUDGE

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 355-201 DIVISION "A"

PAUL HIDDING, ET AL

VERSUS

DR. RANDALL A. WILLIAMS

FILED: _____, 1990 DEPUTY CLERK: _____

REASONS FOR JUDGMENT

This matter come to trial on a claim for medical malpractice against Dr. Williams alleging lack of informed consent and negligence in the performance of surgery.

Paul Hidding, was examined by Dr. Williams on December 10, 1984. A CT scan was later performed and a diagnosis of spinal stenosis was confirmed . Surgery was performed on December 17, 1984.

The day before surgery, December 16, 1984, Dr. Williams visited plaintiff to inform him as to the nature of the surgery. The disclosures made at that meeting form the basis of the Court's finding of lack of informed consent.

On the issue of informed consent, plaintiff has alleged two separate theories. The first of which is that Dr. Williams failed to inform plaintiff of the possible loss of bladder and/or bowel control.

The second thrust of plaintiff's argument is that Dr. Randall Williams was suffering from alcohol abuse in December, 1984, and had an affirmative obligation to inform the patient of his alcohol problem, thereby giving him the option of either obtaining a different orthopedic surgeon to perform the lumbar laminectomy or making the decision to continue on with Dr. Williams. It is this second argument that the Court finds of consequence.

Research of Louisiana jurisprudence has revealed no case directly on point of this issue, however, the Court does have the benefit of a medical review panel and the testimony of Dr. Russell Levy.

The panel decided that "there is a material issue of fact not requiring expert opinion, bearing on liability for consideration by the Court".

Dr. Russell Levy, one of the physicians who sat on the panel, appeared at trial of this matter. Dr. Levy testified that this was a

peculiar kind of case for the panel because of the facts related to the allegations of Dr. Williams' alcohol abuse and because there was evidence presented from a divorce suit.

When the doctor was asked "Do you have an opinion as to whether or not a physician who is suffering from alcohol and drug dependency has an affirmative obligation to explain to his patient that he is suffering from that dependency so that the patient can know that and make the decision for the selection of physicians?". Dr. Levy responded "I certainly think that if a physician or anybody in a position of life and death over someone knows that they're suffering from this condition, they should at least let this person know that they have these problems".

Although the facts of the case are novel, the law on informed consent is clear. In Hondroulis v. Schumacher, 531 So. 2d 450, the Court stated: Because of the presumption created by the uniform consent law, plaintiff's burden of proof has been described as follows, he must show:

"(1) The existence of a material risk unknown to the patient;

(2) A failure to disclose that risk on the part of the physician;

(3) Disclosure of the risk would have led a reasonable patient in plaintiff's position to reject the medical procedure or choose a different course of treatment;

(4) Injury."

The Court, in discussing what disclosures must be made, stated: "Disclosure must be made only when a risk is medically known and of a magnitude that would be material in a reasonable patient's decision to undergo treatment." Hondroulis, supra.

"When a material risk which would have influenced a reasonable person is proven, it must then be shown that the treating physician breached a duty to disclose that risk."

"A fair reading of the statute indicates that its enumeration of risks is merely a listing of the possible results about which disclosure must be made." Hondroulis, supra.

Taking into consideration the jurisprudence, the expert testimony and the decision of the Medical Review Panel, the Court finds that failing to disclose an alcohol abuse problem is a violation of the informed consent statute.

As to the specific evidence that Dr. Williams was in fact suffering from alcohol abuse, the Court finds the testimony of Adele C. Williams, the former wife of Dr. Williams, to be persuasive on this point. Adele Williams

testified that she was married to defendant from December, 1956, until 1984, 28 years. She testified that Dr. Williams was drunk a large portion of the time when he was home. His former wife testified that her husband's performance, along with his ability to function, was affected by his alcohol abuse. She testified that his condition was deteriorating and getting progressively worse.

The Court believes that Adele Williams was very credible and truthful. She was reluctant to be a witness against her former husband and was clearly unhappy to have to testify against her husband or to be a witness in this litigation. The Court felt her testimony was truthful and without malice or bias.

Accordingly, this Court finds as a matter of fact that Dr. Williams abused alcohol at the time of the surgery in question and violated his duty to disclose this fact to his prospective surgical patients. By failing to inform plaintiff of this problem, Dr. Williams failed to meet the guidelines of Hondroulis, supra.

As to damages, the parties stipulated to medical expenses incurred by Paul Hidding in conjunction with the medical condition which he suffered after his surgery of December 17, 1984. The Court therefore finds the sum of TWENTY-TWO THOUSAND SIX AND 50/100 ($22,006.50) DOLLARS in medical expenses was incurred as a result of the actions of Dr. Williams.

The surgery occurred on December 17, 1984. Following the surgery, plaintiff suffered loss of bladder and bowel function. Mr. and Mrs. Hidding had to be trained in catherization techniques. As a result of his catherization, plaintiff suffered various urinary tract infections on a regular basis. Mr. Hidding lived with a colostomy following his surgery to his death. Rubinell Hidding and Russell Hidding testified that her husband no longer went out in public due to the rancid smell emitted by the colostomy bag and that he had no control over flatus. They testified that he no longer enjoyed the events of his daily life, such as working in his garage, going fishing, or dining out.

Mrs. Hidding testified that her husband had no penal sensation and that their sexual activity ceased. Mrs. Hidding testified that she was married to Paul Hidding for 44 years. She testified that he was always a very active person prior to his surgery and that they participated in numerous activities together. Paul Hidding died on January 9, 1990.

In light of this testimony, the Court awards Rubinell Hidding the sum of THIRTY-FIVE THOUSAND AND NO/100 ($35,000.00) DOLLARS for loss of consortium claim.

The Court further awards Rubinell Hidding, as provisional administratrix of the estate of Paul Hidding the sum of TWO HUNDRED FIFTY THOUSAND AND NO/100 ($250,000.00) DOLLARS as general damages for the physical and mental pain Mr. Hidding suffered for five years prior to his death.

Since a claim of prescription has been raised by defendant, the Court must also rule on that exception. The Court finds the exception of prescription to be without merit. The Court believes that it was not until April 15, 1986, that the Hiddings were made aware that there was permanent nerve damage and that plaintiff would never regain bladder or bowel control. The complaint was filed with the Comissioner of Insurance against Dr. Williams in December, 1986. This was well within one year from the date they discovered that Mr. Hidding's bladder and bowel conditions were permanent.

Accordingly, the Court denies the defendant's exception of prescription.

Gretna, Louisiana, this 16th day of July, 1990.

JUDGE

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 354-591 DIVISION "A"

KAREN JEWELL, wife of/and DONALD GLASS, ET AL

VERSUS

THE BERKSHIRE DEVELOPMENT CORPORATION, ET AL

FILED: _____, 1992 DEPUTY CLERK: _____

JUDGMENT

This matter came for hearing on the 5th day of November, 1991, on motions and exceptions.

PRESENT: JAMES O. MANNING, Attorney for Plaintiffs

ERIC O. GISLESON, Attorney for Defendants, HARRIS MORTGAGE and BERKSHIRE DEVELOPMENT CORPORATION

THOMAS C. WILKINSON, Attorney for Defendant, HIBERNIA NATIONAL BANK

JOSEPH C. WILKINSON, JR., Attorney for Defendant, HIBERNIA NATIONAL BANK

ROBERT B. ACOMB, JR., Attorney for Defendant, FEDERAL NATIONAL MORTGAGE ASSOCIATION

The Court, after hearing the pleadings, the evidence and the arguments and memoranda of law furnished by counsel, considering the law and evidence to be in favor of movers, Hibernia National Bank and Federal National Mortgage Association (Fannie Mae), for the written reasons attached hereto:

IT IS ORDERED, ADJUDGED AND DECREED that the motion for summary judgment on behalf of Hibernia National Bank be and the same is hereby granted dismissing plaintiffs' claim against this defendant at plaintiffs' cost.

IT IS ORDERED, ADJUDGED AND DECREED that the motion for summary judgment filed on behalf of Federal National Mortgage Association (Fannie Mae) be and is hereby granted dismissing plaintiffs' claim against this defendant at plaintiffs' cost.

IT IS ORDERED, ADJUDGED AND DECREED that the motions and exceptions filed on behaf of Berkshire, J. H. Harris, Streuby Drumm, and Harris Mortgage Company be and the same is hereby denied.

JUDGMENT READ, RENDERED AND SIGNED this 15th day of January, 1992, at Gretna, Louisiana.

JUDGE

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 354-591 DIVISION "A"

KAREN JEWELL, wife of/and DONALD GLASS, ET AL

VERSUS

THE BERKSHIRE DEVELOPMENT CORPORATION, ET AL

FILED: _____, 1992 DEPUTY CLERK: _____

REASONS FOR JUDGMENT

On November 5, 1991, a hearing was conducted on various motions and exceptions filed by the defendants in the captioned matter. Having considered the oral argument of counsel, the memoranda, affidavits, and exhibits submitted by all parties in support of and in opposition to these motions and exceptions, and the law applicable to the case, the Court issues the following order:

The Motion for Summary Judgment of Hibernia National Bank is granted. The Court finds that there is no genuine issue as to any material fact relating to the claims against Hibernia, and that Hibernia is entitled to judgment as a matter of law. Specifically, Hibernia cannot on this record be deemed to have been a party to a joint venture or partnership concerning the development or conversion of the former Berkshire Apartments to condominiums as alleged in the Petition. No intent or agreement to form such a joint venture, nor to share in profits and losses other than as an ordinary lender would, nor to exercise a proprietary interest in management of the enterprise on behalf of Hibernia or any other party has been shown, and no triable issue on any of those points has been established by Plaintiffs. See Carlson v. Ewing, 54 So. 2d 414, 417 (La. 1951); Glover v. Sowada, 457 So. 2d 101, 104-05 (La. App. 5th Cir. 1984); Terry v. Slidell Refrigerating & Heating, Inc., 271 So. 2d 536, 540 (La. App. 1st Cir. 1972). The affidavit of Mr. Buller and the other submissions of Plaintiffs in Opposition to the Motion for Summary Judgment are insufficient under Article 967 of the Louisiana Code of Civil Procedure and fail to raise a genuine issue of material fact precluding entry of judgment as a matter of law in favor of Hibernia.

In addition, Louisiana law is clear that under the undisputed facts in this case, Hibernia owed no fiduciary duty or other legal duty directly to these Plaintiffs as alleged in the Petition. See Guidry v. Bank of LaPlace, 740 F. Supp. 1208, 1218 (E.D. La. 1990) and cases cited therein; La. Act No. 581 (1991 Regular Sess.), L.R.S. 6:1124.

This Court finds the reasoning and authorities more fully set forth in Hibernia's original and supplemental memoranda and exhibits in support of its motion presuasive, and Hibernia's Motion for Summary Judgment is therefore granted.

As to Hibernia's Peremptory Exception of Prescription, the Court finds that there is no reason to comment on the exception since the Court has granted the Summary on the aforementioned basis.

As to FNMA's Motion for Summary Judgment, Plaintiffs' claims depend upon their allegation that other defendants were the agents of FNMA. Having reconsidered this Motion, this Court finds that there is no genuine issue of material fact as to this claim and that no other Defendant was the agent of FNMA as a matter of law for purposes of Plaintiffs' claims. See Robarson Advertising Service v. Winnfield Life Insurance, 453 So. 2d 662 (La. App. 5th Cir. 1984). The affidavit of Mr. Marsiglia and the Servicing Contract submitted by Plaintiffs in Opposition to FNMA's Motion are insufficient to raise a genuine issue of material fact. Accordingly, FNMA's Motion for Summary Judgment is also granted.

As to the Motions and Exceptions filed by Berkshire, Drumm Harris and Harris Mortgage Corporation, the Court finds that these exceptions are best deferred to a trial on the merits and are accordingly denied.

Gretna, Louisiana, this 15th day of January, 1992.

JUDGE

24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 382-915 DIVISION "A"

THUAN NGOC DO

VERSUS

PHUONG HOANG NGO AND ABC INSURANCE COMPANY

FILED:_____

_____
DEPUTY CLERK

JUDGMENT

This matter came for hearing on the 11th day of October, 1991 and the 9th and 10th of March, 1992, and taken under advisement.

PRESENT:

Betty F. England
Robert E. Winn
Attorney for plaintiff, Thuan Ngnoc Do

Philip C. Ciaccio, Jr.
Attorney for defendants, Phoung Hoang Ngo and Hien Thi Dinh

The Court, after hearing the pleadings, the evidence, and the arguments and memoranda of law furnished by counsel, considering the law and evidence to be in favor of the defendant for the written reasons attached hereto:

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, Phuong Hoang Ngo and Hein Thi Dinh, and against the plaintiff, Thuan Ngoc Do, dismissing plaintiff's suit. All parties to bear their respective costs.

JUDGMENT READ, RENDERED, and SIGNED this 9th day of September, 1992. Gretna, Louisiana.

JUDGE

24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 382-915 DIVISION "A"

THUAN NGOC DO

VERSUS

PHUONG HOANG NGO AND ABC INSURANCE COMPANY

FILED:_____ _____
DEPUTY CLERK

REASONS FOR JUDGMENT

The plaintiff, Thuan Ngoc Do, was assaulted and shot by another patron, named Cao, in a place of business called the Queen Bee Club or Queen Bee Hall located at 6541-6545 LaPalco Boulevard in Marrero, Louisiana. Plaintiff was rendered permanently paraplegic as a result of the injury he sustained in the shooting.

Defendants claim they should not be liable because they were not the owners or operators and that the actions of the gunman were totally unforeseeable and unexpected.

Hein Dinh testified that she and Phuong Ngo live together and have three children and that they were members of a group called the Vietnamese Airborne Group. Defendants claim that the Vietnamese Airborne Group were responsible for promoting that night's activity. On the date of the shooting, arrangements had been made for a band to perform in a portion of the premises. Hein Dinh had arranged for uniform armed security guards. The premises sold alcoholic beverages. Both Phuong Ngo and Hien Dinh testified that they were present at the time the shooting occurred. Hein Dinh testified that she and Phuong Ngo remained after the shooting and that she locked the Queen Bee on her way out and never allowed the Queen Bee to reopen. Hien Dinh testified that she owned the building at the time of the shooting and that Ngo owned the equipment described in the lease. Toan Dinh, defendant Hein Dinh's brother, testified that he was the owner of the Queen Bee Lounge because he had entered into a lease agreement with the defendant, Phuong Ngo.

The Court finds that the defendants, Phuong Ngo and Hien Dinh, were the operators of the Queen Bee on the night of the shooting and that the hall was in their control and custody. However, the Court is not of the opinion that they are liable to plaintiff for the injuries he suffered.

On the night of the shooting, there were five security guards hired and several hundred people present. After the band stopped playing, the defendants permitted the security guards to leave. The plaintiff and many other customers were still on the premises. Testimony as to the exact number of people on the premises at the time of the shooting varied.

Plaintiff testified at trial that he though it could have been as many as 30. Hien Dinh testified to a lesser number at trial, however, in deposition testimony she was quoted as saying 50 people were present at the time of the shooting. At trial, Cuong Nguyen, a member of the Vietnamese Airborne Group, testified that only friends remained at the time of the shooting and not members of the general public but also testified that Cao was only known slightly. He testified that 15 to 20 people were left.

As to the time the security guards left, one estimation was that the security guards were on the premises from 9:00 PM until around 1:30 AM and that the shooting occurred approximately 30 minutes later at 2:00 AM. Cuong Nguyen testified that he though 40 to 45 minutes had elapsed between the time the band stopped playing and when the shooting occurred.

The court is of the opinion that the frame of time between the shooting and the discharge of the security guards was relatively long and that there was not a sufficient number of persons remaining to warrant security. The persons who remained on the premises were known, for the most part, by the owners of the lounge. Thuyen Cao gave no indication of violence earlier that night; nor was there testimony that it was reasonable to anticipate that this man was violent. There was, in fact, no reason to anticipate violence of any sort to occur after the security guards had been discharged.

Dr. Wade Schindler, an expert in security call by plaintiff, was of the opinion

that the nature of the event required security until all guest left the premises. The Court is not willing to find as a matter of law that, at concerts and live music performances, security must remain on the premises until all persons have left.

The Court finds that the defendants acted reasonably in preventing foreseeable criminal conduct. The conduct which cause the plaintiff's injury was not foreseeable.

An owner or occupier of land who uses the property as a location for a business establishment which the public is invited to patronize owes his customers a duty to exercising ordinary care to maintain the premises in reasonably safe condition. Willie v. American Casualty Co., 547 So.2d 1075 (La.App. 1st Cir. 1989). This responsibility includes an obligation to protect patrons from reasonably foreseeable criminal activity by third persons.

The Court in Willie, supra at p.1085, held that the questions of causation and foreseeability are inextricably entwined and that where the criminal act is foreseeable, the failure to take reasonable steps to prevent such act is a proximate cause of its result. The Court in Willie when on to state that if a jury concludes "that precautions were available which might which might have increased the chances of dissuading the attacker... The plaintiff is not obligated to prove the utilization of security measures would surely have prevented the assault. Since additional criminal attacks should have been anticipated, it is not unreasonable to infer that reasonable security measure would have served as a deterrent and the defendant's failure to take such measures constituted a substantial factor in the assault. Causation, like any other element of plaintiff's case, need not be demonstrated by conclusive proof."

The Court in Willie, supra at p.1081, stated that in determining whether or not criminal activities were foreseeable, you are entitled to take into account whether or not there was a history of prior criminal activity in the same location. Citing section 344 of the Restatement (Second) of Torts(1965) at comment (f), the Court stated that "the possessor may know or have a reason to know, from past experience, that there is a likelihood of conduct on the part of third persons in general which are likely to endanger the safety of the visitor even though he has no reason to expect it on the part of any particular individual. If the place or character of his business, or his past

experience, is such that he should reasonably anticipate careless or criminal conduct on the part of the third persons, either generally or at some particular time, he may be under a duty to take precautions against it..."

Hence, it is not required that the defendants be aware of the specific impending criminal conduct or be aware that a particular individual would endanger a patron. It is sufficient that the defendants were, or should have been, aware of a pattern of conduct which made the particular injury-causing criminal conduct foreseeable.

In the instant case, Phoung Ngo and Hien Dinh took all reasonable steps to guard against foreseeable assault on their patrons.

The Court is of the opinion that the defendants did not breach their duty of care to plaintiff when they permitted the security guards to leave. The owners had no reason to anticipate that any harm would come to the persons remaining on the premises. Under the facts of the case, there was nothing that occurred prior to or immediately proceeding this incident which made this particular injury-causing criminal conduct foreseeable.

Accordingly, the Court will dismiss the suit of plaintiff, Thuan Ngoc Do. All parties to bear their respective cost.

SIGNED this 9th day of September 1992. Gretna, Louisiana.

JUDGE

24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 411-405 DIVISION "A"

BETTY ANN DUNN

VERSUS

KEITH L. KREUTZIGER, D.D.S.,M.D. AND OCHSNER FOUNDATION HOSPITAL

FILED: _____ _____
DEPUTY CLERK

JUDGMENT

This matter came for hearing on the 5th day of March, 1993, on an exception of prescription and taken under advisement.

PRESENT:

CHARLES F. GAY, JR.
Attorney for DEFENDANTS

MARGARET HAMMOND
Attorney for PLAINTIFF

The Court, after hearing the pleadings, the evidence, and the arguments and memoranda of law furnished by counsel, considering the law and evidence to be in favor of the exceptor for the following reasons, to wit:

This is an exception of prescription for alleged acts of medical malpractice which took place on July 15, 1987, when Dr. Kreutziger preformed nasal surgery on Betty Dunn. Dr. Kreutziger thought the surgery was unsuccessful and that a revision was clearly necessary. This was verified when plaintiff received a second opinion by Dr. Jack Anderson on October 12, 1987; by a third opinion by Dr. Calvin Johnson on November 2, 1987; and by a fourth opinion of Dr. Joseph Gautreaux on January 26th, 1988.

The Court finds that the alleged injury was discovered possibly as early as October, 1987, and most certainly by January 26, 1988, when four physicians had advised Ms.Dunn that she would need revision surgery. It was clear at that time that surgery would have to be repeated and that the damages she had suffered, nasal deformity and difficulty breathing, were a result of the

surgery. Plaintiff filed a medical malpractice claim with the Commissioner of Insurance on October 5th, 1989, more than a year later.

The Court finds that the action against defendants's have prescribed under LSA-R.S. 9:5628, therefore the suit will be dismissed with prejudice.

IT IS ORDERED, ADJUDGED AND DECREED that the exception of prescription filed on behalf of defendants, Dr. Keith L. Kreutziger and Ochsner Foundation Hospital, be and is hereby granted and plaintiff's suit is dismissed with prejudice at her cost.

JUDGMENT READ, RENDERED, and SIGNED this 5th day of March, 1993. Gretna, Louisiana.

JUDGE

24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 306-035 DIVISION "A"

JUDY WATTS ON BEHALF OF THE MINOR, POLLY WATTS

VERSUS

J.C. PENNEY CO. AND LIBERTY MUTUAL INSURANCE CO.

FILED:_____ _____
DEPUTY CLERK

JUDGMENT

This matter came for hearing on a trial on the merits on the 9th day of April and the 14th day of May, 1992, on an Intervention of Thomas Cerullo, Attorney at Law.

PRESENT:

PATRICK SANDERS
Attorney for Thomas Cerullo, Intervenor

DANIEL J. MARKEY, JR.
Attorney for Lawrence J. Hand, Defendant in Intervention

Intervention into the case was filed by Thomas Cerullo, attorney at law, seeking apportionment of FORTY-FIVE THOUSAND ($45,000.00) DOLLARS of attorneys' fees which was escrowed from the settlement of the principle claim in this lawsuit.

The Court, after hearing the pleadings, the evidence, and the arguments and memoranda of law furnished by counsel, considering the law and evidence to be, for the written reasons attached hereto, as follows:

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein apportioning the escrowed portion of the attorneys' fees as follows:

THOMAS CERULLO, Intervenor, is awarded the sum of FIVE THOUSAND ($5,000.00) DOLLARS.

LAWRENCE J. HAND, Defendant in Intervention, is awarded the balance

of the escrowed fee, FORTY THOUSAND ($40,000.00) DOLLARS.

THOMAS CERULLO, is also awards the initial cost of filing the suit.

IT IS FURTHER ORDER, ADJUDGED, AND DECREED that each party shall bear his own cost in this matter, and that interest is adjudged in proportion to the respective award.

JUDGMENT READ, RENDERED, and SIGNED this 13th day of October, 1992. Gretna, Louisiana.

JUDGE

24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 306-035 DIVISION "A"

JUDY WATTS ON BEHALF OF HER MINOR CHILD, PENNY WATTS

VERSUS

J. C. PENNEY CO. AND LIBERTY MUTUAL INSURANCE COMPANY

FILED:_____ _____
DEPUTY CLERK

REASONS FOR JUDGMENT

The original claim in this matter was a claim for injuries sustained by Polly Watts in an accident at a J.C. Penney store. The Watts' claim was settled without trial on December 10, 1990, for the amount of $270,000.00. At the settlement, $90,000.00 was withheld from the proceeds to pay the attorney's fee of which it was agreed that Mr. Hand should immediately receive half and the other half of the fee amounting to $45,000.00 was escrowed. The issues before the Court are: what is the proper basis for apportioning that fee, and, if Cerullo was fired for cause, what is the value of his contribution.

The Court finds that Thomas Cerullo was fired for cause and that his recovery is limited to quantum meruit.

At the trial of the intervention, Judith Watts testified that she discharged Mr. Cerullo because she came to realize that he was not representing her properly. Mrs. Watts related a story that was both credible and disappointing for anyone who expects conscientious performance from an attorney.

She explained that she was referred to Mr. Cerullo by a mutual acquaintance. Judith Watts fist met Mr. Cerullo at his office where she executed a contract employing him to represent her and her daughter in the principal claim. At the initial interview, she and Mr. Cerullo met briefly in a vestibule of his office building. Mrs. Watts related how he would not allow her

into the main portion of the office because he did not want his landlord, also an attorney, to know of the case. This was the only meeting Mrs. Watts had at his office.

Mrs. Watts testified to three years of frustration while under the guidance of Mr. Cerullo. The attorney/client relationship between Mr. Cerullo and Mrs. Watts was characterized by the lawyer's failure to communicate with the client, meetings outside of his office at places such as the client's apartment complex, a candy store where Mrs. Watts worked in the evenings after her regular teaching job, and on one occasion, an evening encounter in the parking lot of the apartment complex where that attorney met the claimant, Polly Watts, for the first and only time.

Judith Watts detailed how Mr. Cerullo continually explained that her suit would be settled, even giving spurious future dates when the settlement would be completed. He never explained to her that the suit had not been answered and could not be placed on the trial docket. She was not advised that it had not even been served upon defendants.

As a result of one misrepresentation, Mrs. Watts moved from her apartment into a more expensive one. She expected that the settlement, promised to be immediately forthcoming by Mr. Cerullo, would help pay the added rent expense. The settlement never materialized and the Watts were unable to pay the increased rent without borrowing funds.

Ordinarily, the Court would be inclined to regard this incident as an error in judgment by Mrs. Watts. However, it is obvious that the plaintiff was not given complete information by her attorney upon which to base a sound decision. For example, she was never told that her petition had not been served, that the information requested by the defendant had not been sent by Mr. Cerullo, and that her attorney's "theory" required delaying settlement to observe the minor's development. In the opinion of the Court, Mr. Cerullo's

lack of candor and his failure to properly communicate with his client contributed to the mistake in judgment made by Mrs. Watts.

Mrs. Watts related how, on more than one occasion, Mr. Cerullo advised her of arrangements and appointments with medical professionals, appointments which caused her to miss work and Polly to miss school. However, when she arrived for the medical appointments, she discovered that Mr. Cerullo had failed to follow through on the arrangements and Polly was not seen by the doctor.

Judith Watts testified that she began keeping a written log of representations made to her by her attorney, because, as she put it, he changed stories so frequently that she thought she was losing her mind.

Mrs. Watts testimony described numerous other dubious actions by Mr. Cerullo which brought her to the point of consulting the Bar Association to determine what could be done about the situation.

The Court is of the opinion that Mrs. Watts was a very credible witness and finds that she had ample cause to discharge Mr. Cerullo as her attorney.

Having found that Mr. Cerullo was discharged for cause, the claim for attorney fees is relegated to quantum meruit.

Mr. Cerullo filed a seven paragraph petition on the day the case would have prescribed. The petition was never served on defendants. This is his only document in the record.

In total, Mr. Cerullo mailed eight letters to the insurer, Liberty Mutual, during the three years he represented the Watts. The last letter dated March 27, 1986, contained a demand for $175,000.00 to settle the claim. The demand was rejected and a counter offer of $15,500.00 was made by the insurer in August, 1986. At this point the lawsuit went unserved. When Mr. Cerullo was discharge in January of 1987, some nine months after his demand and five months after the counter offer of $15,500.00, service had not been

requested and no answer had been filed by the defendant.

During the course of his representation, Mr. Cerullo engaged in no formal discovery. No depositions were taken, no written statements of witnesses other than some medical reports were obtained. Mr. Cerullo was not diligent in forwarding the scant evidence he had gathered to the insurer despite requests from the insurance representative.

At trial, Mr. Cerullo produced estimates of time spent on the case showing such items as five hours for travel to the client's apartment and ten hours to prepare a seven paragraph petition, most of which is boiler plate language. Consequently, the Court was left with the impression that Mr. Cerullo's estimate of time spent on the Watts' case was exaggerated. Accordingly, the Court is of the opinion that the testimony of Mr. Cerullo regarding time spent developing his theory of the case to be self-serving and of little significance.

Mr. Cerullo's testimony at trial showed that his only strategy was to "wait and see". In a quantum meruit situation, this "waiting", while performing no other service, should not be compensated.

Interestingly, Mr. Cerullo claims to have spent many hours reviewing medical texts and discussing the case with another lawyer and a chiropractor. However, he communicated none of the medical knowledge, he supposedly acquired, to the insurance representative in an effort to settle the case. Whether he learned anything that could have been significant is irrelevant since he did not contribute it to the cause of his client despite opportunities to do so. Accordingly, the Court gives little weight to this testimony.

As an indication of how little effort was put into the representation by Mr. Cerullo, the Court examined the eight letters he wrote during his three years of employment. All were addressed to the insurer. Half of the letters were hand written, two letters contained only one sentence, five contained two

sentences, and the longest, his last, contained six sentences.

The Court, upon examining the entire record and in light of its years of experience, finds that Mr. Cerullo probably spent no more than 30 hours working on this case over the three years that he was employed as the Watts' attorney. Out of an abundance of fairness the Court will add to that thirty hours, another ten hours, reaching a total of forty hours. At ONE HUNDRED TWENTY-FIVE ($125.00) DOLLARS per hour, the maximum fee to which Mr. Cerullo is entitled is FIVE THOUSAND ($5,000.00) DOLLARS. Additionally, the Court will return the cost of the initial filing fee.

In conclusion, the Court finds that Mr. Cerullo's contribution to the ultimate resolution of the case was minimal. His sole accomplishment was to interrupt prescription. He is amply compensated for his effort by the award of FIVE THOUSAND ($5,000.00) DOLLARS plus filing fee.

SIGNED this 13th day of October, 1992. Gretna, Louisiana.

JUDGE

24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 394-298 DIVISION "A"

KENNETH POCHE AND SCOTT KEY

VERSUS

BAYLINER MARINE CORPORATION AND WAGNER MARINE, INC.

FILED:_____ _____
DEPUTY CLERK

JUDGMENT

This matter came for hearing on the 28th day of May, and the 2nd and 3rd day of April, 1992 on a trial of the merits.

PRESENT:

ROBERT C. LEHMAN
Attorney for KENNETH POCHE and SCOTT KEY

FREDRICK H. DWYER
Attorney for BAYLINER MARINE CORPORATION

ROY V. LADNER
Attorney for WAGNER MARINE,INC.

JAMES M. GARNER
Attorney for GLENS FALLS INSURANCE COMPANY

The Court, after hearing the pleadings, the evidence, and the arguments and memoranda of law furnished by counsel, considering the law and evidence to be in favor of the plaintiffs and against Bayliner Marine Corporation for the written reasons attached hereto:

IT IS ORDERED, ADJUDGED AND DECREED that the sale of the Bayliner Trophy Convertible 2560 boat is immediately rescinded, and that Bayliner Marine refund to petitioners, Kenneth Poche and Scott Key, the full purchase price of FORTY-SIX THOUSAND, SEVEN HUNDRED NINETY-NINE and 91/100 ($46,799.91) DOLLARS, plus judicial interest from date of purchase.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment against defendant, Bayliner Marine Corporation, in favor of petitioners, Kenneth Poche and Scott Key, reimbursing petitioners for various expenses incurred by them resulting from their ownership of the vessel in the sum of FOURTEEN THOUSAND FOUR HUNDRED THIRTY THREE and 04/100 ($14,433.04) DOLLARS plus judicial interest from date of judicial demand.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment in favor of petitioners, Kenneth Poche and Scott Key, and against defendant, Bayliner Marine, in the amount of TWENTY THOUSAND ($20,000.00) DOLLARS plus judicial interest from date of demand as consequential damages incurred for inconvenience, aggravation, and loss of use resulting from repeated attempts to have the defects in the boat corrected and petitioners' inability to use the boat for the purpose intended for the four year period.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment against defendant, Bayliner Marine Corporation, in favor of petitioners, Kenneth Poche and Scott Key, in the sum of TWENTY THOUSAND ($20,000.00) DOLLARS for reasonable attorneys fees, plus expert fees in this matter which are set at ONE THOUSAND ($1,000.00) DOLLARS per expert and judicial interest from date of demand for all professional costs and fees incurred.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant, Bayliner Marine Corporation, be taxed with all cost of these proceedings.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendant, Wagner Marine, Inc., and against the

petitioners, Kenneth Poche and Scott Key, dismissing this claim with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment in favor of third party defendant, Glens Falls Insurance Co. and against third party petitioner, Wagner Marine Inc., dismissing this claim with prejudice.

JUDGMENT READ, RENDERED, and SIGNED this 14th day of October 1992. Gretna, Louisiana.

JUDGE

24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 394-298 DIVISION "A"

KENNETH POCHE AND SCOTT KEY

VERSUS

BAYLINER MARINE CORPORATION AND WAGNER MARINE, INC.

FILED:_____ _____
DEPUTY CLERK

REASONS FOR JUDGMENT

This matter concerns an action for rescission of sale and damages involving the purchase of a Bayliner Trophy Convertible 2560 boat by the plaintiffs. The defendants are Bayliner Marine Corporation, the manufacturer of the vessel, and Wagner Marine, Inc., the local dealer of the vessel. At the conclusion of trial, the Court granted a motion to dismiss the action of petitioners against Wagner Marine, Inc. and Wagner's third party demand against its insurer, reserving all actions and relief against the manufacturer, Bayliner Marine Corporation.

The issue before the Court is whether plaintiffs are entitled to an award of the sale price on account of a vice or defect in the vessel sold that would render the vessel either absolutely useless or its use so inconvenient and imperfect that it must be supposed that the buyer would not have purchased it had he know of the vice.

The Court finds that plaintiffs have carried their burden of proof in this matter. The vessel exhibited unsatisfactory performance immediately after purchase and the performance characteristics of the vessel proved unacceptable for either pleasure or fishing use.

Plaintiffs purchased the boat from Wagner Marine in April of 1988 for the

sum of $46,799.91. Plaintiffs were interested in purchasing a boat that would best suit their needs as an offshore fishing and sport diving vessel. Prior to purchase, the boat was not available for a test run. The plaintiffs did travel to Houston, Texas for the purpose of looking at an identical boat the Houston dealership had in its yard. At that time, a number of sales representatives of Bayliner vessels had represented that the vessel was ideally suited for offshore fishing and sport diving. Additionally, a sales person from Wagner Marine had contacted Bayliner Marine to verify sales literature relating to performance of this model boat.

Bayliner's advertising literature showed the vessel to be a suitable blue water fishing vessel which could be expected to attain speeds of 33.1 m.p.h. to 37 m.p.h. and cruise with a normal load at 26.8 m.p.h. @ 3500 r.p.m. Based on these verbal and written representations, the plaintiffs purchased the Bayliner Trophy Convertible 2560.

After taking possession of the boat, the plaintiffs found performance to be severely lacking and the vessel to be useless for offshore fishing. The boat would not come up to plane except at full throttle, and even then it proved impossible to attain a speed even close to the manufacturer's suggested performance as represented by sales literature and personnel.

On the first attempt made by plaintiffs to bring the boat fishing, the trip was abandoned when they couldn't get enough power and ran out of gas trying. Numerous communications were undertaken between plaintiffs and the local dealer as well as the manufacturer in an attempt to rectify the problems. Various propeller modification were made at plaintiffs' expense, to no avail. After six months a marine surveyor was engaged by Bayliner to survey and ascertain the cause, nature and extent of the problem and to recommend repairs.

Bayliner surveyor, Mr. Gilligan, determined that the vessel was severely

underpowered and due to its lack of performance was not suited for its intended purpose.

As a consequence, a decision was reached by Bayliner that the boat needed a new engine. The original power was a 260 horsepower O.M.C. engine and Bayliner suggested that it be repowered with a 270 horsepower Volvo-Penta engine unit. Plaintiffs' expressed concern that this would not be a significant enough change but was reassured that this was correct. Nevertheless, Bayliner installed the 270 Volvo-Penta unit, at some expense to plaintiffs. After the change, the boat still exhibited the same characteristics of being extremely underpowered. Plaintiffs were still unable to use the vessel in the gulf or any other recreational activity.

Discovery by plaintiffs, showed that Bayliner had identical problems with other vessels and that the engine replacement in those vessels produced equally unsatisfactory results.

Petitioners was also advised to try different propellers which they did at their expense. Scott Key testified that he spent a minimum of $1,000.00 purchasing different propellers recommended by Bayliner, all to no avail.

Plaintiffs than engaged Mr. Gilligan, the original marine surveyor hired by Bayliner, who conducted a survey on July 6, 1989. He conducted this survey after the boat was repowered. Gilligan concluded that the vessel would not come to plane and that the hull was drastically underpowered.

Telephone communications between the parties continued through this time, through November, December, and January. Suit was than filed in February of 1990.

At trial of this matter, Mr. Warren Wagner, owner of Wagner Marine, stated that the boat did not perform in an acceptable manner and that Bayliner offered little cooperation in addressing the problem. Mr. Wagner testified that had he been aware of the actual performance of the vessel, he would never

have sold it to plaintiffs.

Mr. Gilligan calculated the fuel consumption at the rate of one-half mile per gallon. Taking into consideration a twenty percent fuel safety reserve factor which the expert stated was standard, the vessel would have a range of forty miles (if the vessel would have been capable of cruising). Such range is not safe for use as a blue water fishing vessel. He testified that the lack of adequate power and excessive fuel consumption actually made the boat dangerous for use as a blue water fishing vessel. Lack of power even made the vessel unsafe for use on Lake Pontchartrain.

Ken Helmrich, an expert marine surveyor retained by plaintiffs, testified that the boat did not perform satisfactory and failed to attain suitable speeds as advertised and failed to plane properly or cruise at any reasonable engine speed. He further stated that the boat would only come out of the water when the engine was at full throttle, a condition which would hurt the life of the engine and cause excessive fuel consumption.

Defense called an expert, Mr. Clark Scarboro, who inspected the vessel. Mr. Scarboro was a recently retired employee of Bayliner Marine who was one of the engineering staff members that developed the design of the 2650 Trophy vessel. He claimed that the vessel reached maximum r.p.m. of 4200 and a maximum speed of 28.3 m.p.h. Even though the bottom of the boat had been pressured washed and scraped, he claimed the bottom was still rough and with a clean bottom and a working trim it could reach speeds of 29 or even up to 32 m.p.h. He testified that if speed was not the most important factor, this vessel was suitable for the purposes of offshore fishing.

The Court finds defense's expert testimony to be of little merit because it showed that the boat was not able to attain speeds even approaching that which was represented in the Bayliner literature and advertisements.

The Court is further convinced that the vessel would not maintain a plane

at less than full throttle and had essentially no cruising capabilities. Therefore, the vessel is not useable, not only because it couldn't attain the speed the literature claimed, but also because of these other unacceptable characteristics.

Our Louisiana Civil Code provides for rescission of a sale through redhibition. This is defined in LSA C.C. Article 2520, which states:

> "the avoidance of a sale on account of some vice or defect in the thing sold, which renders it either absolutely useless, or its use so inconvenient and imperfect, that it must be supposed that the buyer would not have purchased it, had he known of the vice."

The boat in the instant matter has proven virtually useless for the plaintiffs' purpose. Not only does the boat fail to attain the speed it originally claimed, it also performs poorly and uses an extraordinary amount of fuel.

When the seller does not know of the vices in the thing he sold, he is only bound to repair, remedy, or correct the vices. If he is unable to or fails to repair, remedy or correct the vices, then he must restore the purchase price, and reimburse the reasonable expenses occasioned by the sale, as well as those expenses incurred for the preservation of the thing. LSA C.C. Article 2531.

When a seller knows of the defect in the thing sold and omits to reveal this information to the purchaser, the seller becomes liable to the purchaser not only for the restitution of the price and repayment of the expenses, but also for attorney's fees and is answerable to the buyer in damages. LSA C.C. Article 2545.

Plaintiffs made numerous request to Wagner Marine and, although not required to do so, gave the manufacturer an opportunity to correct the defects. In the case of a manufacturer, it is presumed to know the defect in the thing which it manufactures and consequently, is considered a bad faith seller, liable for damages and attorney's fees in addition to the price and expenses in connection with the sale. Dickerson v. Begnaud Motors Inc., 446 So2d 536, (3rd Cir. App. 1984); Reid v. Leson Chevrolet Co. Inc., 542 So2d 673, (5th Cir.

App. 1989); Alexander v. Burrough Corporation, 350 So2d 988; (2d Cir. App. 1977); LSA C.C. Article 2531.

The Court felt plaintiffs were unrelenting in their attempts to get Bayliner Marine to make the boat perform properly. The Court, on the other hand, felt Bayliner Marine had much less than a fervent interest in correcting the problem. Bayliner Marine was also less than diligent when it came to discovery and other aspects of the litigation which resulted in this action being very time consuming. As to the quantum of recoverable items and damages, the Court finds plaintiffs are entitled to the following: their original purchase price of $46,799.91; $1,333.04 in repair work (Plaintiff Exhibit #23); $1,100.00 cost of propellers; insurance premiums of $8,000.00; slip rental of $3,000.00; and miscellaneous expenses of $1,000.00 for battery, fuel, oil, and general maintenance.

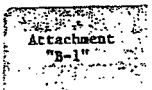
The plaintiffs are also entitled to recover attorney's fees under LSA C.C. Article 2545. Taking into consideration the hours involved in bringing this suit to trial and the nature of the lawsuit, the Court finds TWENTY THOUSAND AND NO/100 ($20,000.00) DOLLARS to be reasonable attorney's fees. Because of the complexity and time consuming nature involved in the opinions of the experts, the Court sets expert fees in this matter at ONE THOUSAND AND NO/100 ($1,000.00) DOLLARS per expert.

The Court further awards consequential damages for inconvenience and lack of use of the vessel for the past four years in the amount of TEN THOUSAND AND NO/100 ($10,000.00) DOLLARS per litigant which totals TWENTY THOUSAND AND NO/100 ($20,000.00) DOLLARS.

SIGNED this 14th day of October 1992. Gretna, Louisiana.

JUDGE

NOT DESIGNATED
FOR PUBLICATION



IN THE MATTER OF THE WRONGFUL DEATH OF STANTON J. STARK * NO. 86-CA-34

* COURT OF APPEAL

* FIFTH CIRCUIT

* STATE OF LOUISIANA

APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NUMBER 263-171, DIVISION "A"
HONORABLE G. THOMAS PORTEOUS, JR., JUDGE

CHARLES GRISBAUM, JR.

JUDGE

JUN 02 1986

(Court composed of Judges Lawrence A. Chehardy, Thomas J. Kliebert, and Charles Grisbaum, Jr.)

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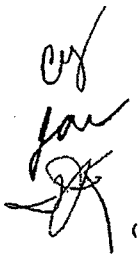
AMENDED IN PART, AND AS AMENDED, AFFIRMED



On appeal is a judgment notwithstanding the verdict (J.N.O.V.) disposition of a wrongful death matter in which the jury had allocated fault 44 percent to Stephen Douglas and 56 percent to the decedent, Stanton Stark. We amend and, as amended, we affirm.

We are called upon to determine:

(1) Whether the trial court erred in failing to credit GEICO for the $10,000 paid by the auto liability insurer, State Farm; and

(2) Whether the trial court erred in granting the J.N.O.V. in that (a) it erroneously reassessed percentages

of negligence and (b) it erroneously increased the quantum award.

The record shows that on November 25, 1981, as Stephen Douglas was about to depart an evening party attended by various neighborhood teen-aged males, Stanton Stark walked up to the passenger door of Douglas' vehicle. Besides Douglas, three other males were inside the car. Shortly after Stark approached, Douglas pulled away, made a U-turn--in part, across a neighbor's lawn--and headed south down Sandra Avenue towards Lafreniere Street. For whatever reason, Stark, who had been positioned in the open doorway of the car, remained so positioned, riding on the door sill as the car followed this path. After the car straightened out on Sandra, Stark either fell or jumped off, struck his head, and later died.

In addressing the initial issue, we note the plaintiffs in this suit oppose GEICO, their uninsured/under-insured motorist carrier. State Farm paid its $10,000 liability limit for coverage on the Douglas auto and was dismissed at the close of the plaintiffs' case. Plaintiffs concede that GEICO is entitled to a $10,000 credit for the sum paid by State Farm. Calculated in the initial judgment, the credit must have been omitted inadvertently from the J.N.O.V. Accordingly, we amend the judgment of the trial court to incorporate the $10,000 credit.

We now turn to the remaining issue and initially address whether the trial court erred in reassessing the negligence of the parties. The jury found that Stark assumed the risk of injury. It also specifically allocated fault at 44 percent to Douglas and 56 percent to Stark. In casting

its first and J.N.O.V. judgments, the court disregarded this assumption of risk finding, concluding that La. C.C. art. 2323 more properly applied to assign degrees of fault. In essence, then, the court determined that the finding as to assumption of risk was legally irrelevant.

The trial court based its conclusion on what we consider dicta in Bell v. Jet Wheel Blast, 462 So.2d 166 (La. 1985) that indicates:

> In those types of cases in which comparative fault principles may be applied, the principles of article 2323 and its predecessors should be applied by analogy so that the claim for damages recoverable shall be reduced in proportion to the degree or percentage of negligence attributable to the person suffering the injury, death or loss. . . . Furthermore, the adoption of a system of comparative fault should, where it applies, entail the merger of the defenses of misuse and assumption of risk into the general scheme of assessment of liability in proportion to fault.

Id. at 172.

Our jurisprudence states that "The elements of the defense of assumption of the risk are: (1) that the plaintiff had knowledge of the danger; (2) that he understood and appreciated the risk therefrom; and (3) that he voluntarily exposed himself to such risk." Fritscher v. Chateau Golf & Country Club, 453 So.2d 964, 967 (La. App. 5th Cir. 1984), writ denied, 460 So.2d 604 (La. 1984). See also Beck v. Boh Bros. Constr. Co., 467 So.2d 1318, 1321 (La. App. 5th Cir. 1985). Here, it appears that Stark had been drinking, which might well have affected his knowledge of danger or his appreciation of that danger. Moreover, the testimony without exception indicates that Stark's approaching the car and his behavior thereafter were unplanned and unanticipated.

He had not planned to ride with Douglas, nor does it appear that he was attempting to enter the car. The spontaneity of Stark's behavior militates against his fully comprehending the risks attendant. Finally, nowhere does it appear that Stark knew that Douglas would start his car and drive away with Stark clinging to its side. Once Douglas left, Stark had no idea how far he would drive. Even if Stark hopped aboard once the car began to move, it cannot be said that Stark voluntarily assumed the risks of bouncing across a neighbor's yard or of proceeding on down the street. Stark was given no opportunity to get off during the course of these maneuvers. Given the leanings of Bell and the facts herein, we find the court correctly concluded that assumption of the risk was inapplicable as a matter of law.

We now turn to the questions of whether the trial court erred in its reassessment of the percentages of fault. By the 1979 amendment of La. C.C.P. art. 1811 quantum may, indeed, be altered by J.N.O.V. provided that "based on the evidence there is no genuine issue of fact." That is, "where the trial court is convinced that, under the evidence, reasonable minds could not differ as to the amount of damages, it should have the authority to grant the appropriate judgment notwithstanding the verdict." La. C.C.P. art. 1811 comments. We also note that this enunciated standard applies to changes affecting the merits, more specifically, the reassessment of fault. Blum v. New Orleans Pub. Serv., Inc., 469 So.2d 1117, 1119 (La. App. 4th Cir. 1985), writ denied, 472 So.2d 921 (La. 1985).

The trial court, in its reasons for judgment, states, in part:

Viewing the evidence most favorable to the party against whom the motion is made, the court finds that defendant failed to prove that plaintiff was in any way at fault in becoming an "outrider" on the vehicle, voluntarily. All evidence preponderates to the finding that plaintiff found himself in a position of imminent peril without sufficient time to consider and weigh all circumstances or the best means that may be adopted to avoid the impending danger.

There was no evidence presented which could substantiate a finding that the emergency was brought about by any alleged fault on the part of Stanton J. Stark.

Tim Talbot testified that when Stanton got to the car the lights and engine were off. Norman McKay testified that the car was stopped when Stanton was on the threshold.

It is clear from the testimony of those present who could recall the particulars of how Stanton came to be on the auto that Stanton was positioned between or/on the threshold and the open car door when the vehicle began to move. The driver did not use reasonable care in taking on its passenger; Stanton had every right to assume that the vehicle would not move until he was safely away or inside the vehicle. It is also clear that once the vehicle did pull forward Stanton was on the horns of a dilemma . . . [from which] only hindsight and cool reflection could have possibly provided a safe escape. The law clearly does not hold plaintiff to this standard of conduct. See Carter v. City Parish Government[,] 423 So.2d 1080 (La. 1982).

* * *

It is clear from the evidence that at the beginning of the scenario Stanton Stark was nothing more than a pedestrian, resting on the Douglas vehicle while observing the activity of the occupants. Stanton then involuntarily became an "outrider" on the vehicle because of the sudden and unexpected movement of the car.

The court is of the opinion that Stanton had every legal right to assume

> that there would be no movement of the vehicle until he was safely away from, or inside of, the vehicle.
>
> Under these circumstances, the court concludes that Steven [sic] Douglas breached the duty he owed to plaintiff to exercise reasonable care in the operation and control of his vehicle and the risk of plaintiff's injury was within the scope of that duty. Inasmuch as Steven [sic] Douglas' negligent conduct was a cause[-]in[-]fact of the accident and resulting injuries, he is liable to plaintiff.

We agree.

Regarding the final issue, quantum, we note the trial court, in its reasons for judgment, states, "The court is convinced that, under the evidence of this case, reasonable minds could not differ as to the fact that a much higher award of damages was justified." Again, we agree. Recognizing the well-settled legal axiom that a trial court has wide discretion in its award of damages, we will not disturb such an award absent manifest error, and we find none. Accordingly, we find no error in the trial court's entry of the judgment N.O.V. in favor of the plaintiff.

Other issues have been raised, which, we find, have no merit.

For the reasons assigned, the judgment of the trial court is affirmed, with the exception that this court reduces the damage award by $10,000, which is the amount State Farm Mutual Automobile Insurance Company, as the insurer of Stephen Douglas, has already paid the plaintiffs.

AMENDED IN PART, AND AS AMENDED, AFFIRMED

NOT DESIGNATED
FOR PUBLICATION

JUDY WATTS, ON BEHALF OF HER MINOR DAUGHTER, POLLY WATTS

VERSUS

J. C. PENNEY AND LIBERTY MUTUAL INSURANCE COMPANY

NO. 93-CA-811

COURT OF APPEAL

FIFTH CIRCUIT

STATE OF LOUISIANA

ON APPEAL FROM THE 24TH JUDICIAL DISTRICT COURT
STATE OF LOUISIANA, PARISH OF JEFFERSON
NO. 306-035, DIVISION "A"
THE HONORABLE G. THOMAS PORTEOUS, JUDGE

FEB 23 1994

SOL GOTHARD
JUDGE

(Court composed of Judges Charles Grisbaum, Jr., Edward A. Dufresne, Jr. and Sol Gothard.)

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Attorney for Intervenor/Appellant (Thomas Cerullo)

DANIEL J. MARKEY, JR.
5559 Canal Boulevard
New Orleans, Louisiana 70124
Attorney for Defendant In Intervention (Lawrence J. Hand)

AMENDED AND AS AMENDED, AFFIRMED

Appellant, Thomas Cerullo, intervened in this action for damages to protect his rights under a contingency fee contract with the plaintiff. The trial court awarded him $5,000.00 on a quantum meruit basis for professional services rendered. Mr. Cerullo brings this appeal seeking review of the adequacy of the amount awarded and requesting additional funds for reimbursement of outstanding advances for medical expenses and costs related to the case.

In January, 1984, Polly Watts, the minor daughter of Judith Watts, was injured when she fell in a dressing room of the J.C. Penney store on Lapalco Boulevard in Jefferson Parish. Judith Watts employed Thomas Cerullo to assert the claim. Ms. Watts signed a contingency fee contract with Mr. Cerullo and suit was filed against J.C. Penney and its insurer, Liberty Mutual Insurance Company on January 25, 1985.

In July, 1987, Ms. Watts discharged Mr. Cerullo and hired Lawrence Hand to represent her in the action for damages. Mr. Cerullo filed a petition of intervention in November, 1988 seeking attorney's fees and reimbursement of certain costs. The lawsuit was settled out of court on December 10, 1990 for a total of $270,000.00; of which, $90,000.00 was withheld for payment of attorney's fees. Mr. Hand received one-half of that amount, or $45,000.00, immediately and the remaining $45,000.00 was held in escrow pending consideration of and ruling on Mr. Cerullo's claim.

After a trial on the merits, Mr. Cerullo was awarded $5,000.00 and the remaining $40,000.00 was awarded to Mr. Hand. The trial court gave extensive written reasons for judgment which indicate that the award represents payment for thirty hours of work at $125.00 per hour. The trial court stated that, "the Court finds that Mr. Cerullo's contribution to the ultimate resolution of the case was minimal. His sole accomplishment was to interrupt prescription." Mr. Cerullo argues that the award is too low to fairly compensate him for his work.

The litigation record of the principal matter shows that Mr. Cerullo filed only one pleading, the initial petition. Service on that petition was held and, in fact, never accomplished. No depositions were taken in the three years Mr. Cerullo had the case. At trial, Mr. Cerullo testified that he did not keep a record of the time he spent working on the case. He submitted a reconstructed summary of hours worked, asserting that he spent a total of 263.25 hours.

At trial Mr. Cerullo stipulated that service on the petition for damages was held, that there was no litigation using the courts and, that there were no depositions or discovery of any kind. He testified that he spent time researching the case, discussing the matter with the insurance adjuster and various medical and legal experts. Mr. Cerullo stated that he did not move forward with the case because the injured girl was only

fourteen at the time and he wanted to know the full extent of her injuries before he settled the matter.

Mr. Cerullo introduced testimony from Dr. Rick Saluga, a chiropractor who treated Polly Watts for about three weeks. Dr. Saluga verified that, considering travel time, eight to ten hours would be a fair estimate of time spent by Mr. Cerullo in consultation. Donald Klein, an attorney, testified that Mr. Cerullo spent about ten hours discussing the matter with him.

The record further shows that Mr. Cerullo wrote eight letters to Liberty Mutual during the three years he represented Ms. Watts. The last letter, written in March, 1986 contained a demand for $175,000.00 to settle the claim. That demand was rejected by the insurance company and a counter offer of $15,000.00 was made in August, 1986. The matter apparently did not proceed beyond that, and in January of 1987 Mr. Cerullo was discharged.

Ms. Watts testified that she had few meetings with Mr. Cerullo, and that these meetings usually took place outside of his office. She complained that Mr. Cerullo was uncommunicative and that the limited communications were fraught with misrepresentations.

When a party to a contingency fee contract discharges his attorney before the fee is earned, the attorney's mandate is revoked and the contract is dissolved. Quantum meruit then becomes the proper basis for recovery. Saucier v. Hayes Dairy Products, Inc., 373 So.2d 102 (La.1978); Keys v. Mercy Hosp. of New Orleans, 537 So.2d 1223 (La.App. 4th Cir.1989). In Toups v. Brainis, 608 So.2d 246, 247 (La.App. 5th Cir.1992), this court stated:

> Under Saucier v. Hayes Dairy Products, Inc., 373 So.2d 102 (La.1979), the attorney fee of a discharged attorney is to be apportioned according to the respective services and contributions of the attorney's work performed and other relevant factors as set forth in Rule 1.5 of the Rules of Professional Conduct; which provides in pertinent part:
>
> > (a) A lawyer's fee shall be reasonable. The factors to be

considered in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer:

(3) The fee customarily charged in the locality for similar legal services;

(4) The amount involved and the results obtained;

(5) The time limitations imposed by the client or by the circumstances;

(6) The nature and length of the professional relationship with the client;

7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) Whether the fee is fixed or contingent.

Quantum meruit means as much as is deserved. Smith v. Westside Transit Lines, Inc., 313 So.2d 371 (La.App. 4th Cir.1975), writ denied, 318 So.2d 43 (La.1975). A quantum meruit analysis properly evaluates not merely the laws expended, but the results and benefits obtained. Smith v. Westside Transit Lines, Inc., supra; Keys v. Mercy Hosp. of New Orleans, supra, at 1225. Therefore, recovery is limited to the actual value of the service rendered. Saucier v. Hayes Dairy Products, Inc., supra; Keys v. Mercy Hosp. of New Orleans, supra.

The trial court gave credence to Ms. Watts testimony and found that she had ample cause to discharge Mr. Cerullo for his lack of candor and failure to communicate. The court further found that Mr. Cerullo took a "wait and see" approach to the case and should not be compensated for that time. The court further found that the estimate of the hours spent, reconstructed after the fact and offered at trial by Mr. Cerullo, was exaggerated.

Given the facts of this case we cannot hold that the trial court abused its discretion in awarding Mr. Cerullo a total of $5,000.00 in attorney's fees.

Mr. Cerullo also complains that the court erred in failing to award him $2,423.00 as reimbursement for outstanding advances for medical expenses and costs related to the case. Mr. Cerullo introduced copies of cancelled checks made out to Ms. Watts totaling $425.00, two checks to the clerk of court totaling $130.00 and several other checks for various medical expenses totaling $689.00. Those costs total $1,244.00. Mr. Cerullo also asks for reimbursement for an additional $1,179.00 for litigation costs guaranteed. The trial court judgment awarded Mr. Cerullo reimbursement for the initial filing fee but was silent as to the other costs.

Recently, in Dupuis v. Faulk, 609 So.2d 1190, at 1192, (La.App. 3rd Cir. 1992), the court stated:

> The Privilege for attorney's fees is granted by La. R.S. 9:5001 and R.S. 37:218. Both statutes were amended by Acts 1989, No. 78 § 1, effective June 16, 1989, to include the following definitions:
>
> 9:5001
> B. The term "professional fees", as used in this Section, means the agreed upon fee, whether fixed or contingent, and any and all other amounts advanced by the attorney to or on behalf of the client, as permitted by the Rules of Professional Conduct of the Louisiana State Bar Association.
>
> 37:218
> B. The term "fee", as used in this Section, means the agreed upon fee, whether fixed or contingent, and any and all other amounts advanced by the attorney to or on behalf of the client, as permitted by the Rules of Professional Conduct of the Louisiana State Bar Association.
>
> The Rules of Professional Conduct of the Louisiana Bar Association with regard to the advances made to a client are found in Rule 1.8(e):
>
> (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

> (1) A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
>
> (2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

Rule 1.8(e) embodies the former Disciplinary Rule 5-103(B):

> Disciplinary Rule 5-103(B) provides: "While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to his client, except that the lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses."

In Louisiana State Bar Association v. Edwins, 329 So.2d 437 (La.1976), at page 446, the Supreme Court addressed the propriety of advancing financial assistance during representation of a client:

> If an impoverished person is unable to secure subsistence from some source during disability, he may be deprived of the only effective means by which he can wait out the necessary delays that result from litigation to enforce his cause of action. He may, for reasons of economic necessity and physical need, be forced to settle his claim for an inadequate amount.

The Dupuis court held that certain medical and living expenses are now included a part of the "fee" for privilege purposes. The court at 1193, further observed that:

> ...In extending the privilege to cover such advances, the legislature intended to overrule, at least in part, Calk v. Highland Construction & Manufacturing, 376 So.2d 495 (La.1979).
>
> In Calk, supra, the Louisiana Supreme Court found that the word "fee" did not include advances which are in the nature of a loan, nor does it include the payment or reimbursement of expenses which, like medical bills, constitute the client's special damages...

We find that interpretation of the legislative intent to be consistent with the changes made in the 1989 amendments to LSA-R.S. 37:218 and LSA-R.S. 9:5001. Thus, we find the trial court's judgment should be amended to award Mr. Cerullo reimbursement of advances made by him in furtherance of Ms. Watts litigation. We do not find, nor has Mr. Cerullo suggested, jurisprudential support for an award of funds secured but not paid to medical providers.

For the foregoing reasons the judgment of the trial court is amended to award Mr. Cerullo the sum of $1244.00 for reimbursement of funds advanced. Mr. Hand's award is decreased by $1,244.00. In all other respects the judgment is affirmed.

AMENDED AND AS AMENDED, AFFIRMED

TWENTY-FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 81-3248 DIVISION "A"

STATE OF LOUISIANA

VERSUS

LANE NELSON

FILED:_____ _____DY.CLERK

O R D E R

This matter comes before this Court on defendant, Lane C. Nelson's, Application for Post-Conviction Relief in which he asserts the following claims for relief:

1) Jurors were improperly disqualified for cause.

2) The State improperly was allowed to exercise a peremptory challenge against a juror who already had been sworn in.

3) The trial court improperly interfered with the voir dire interrogation of the jury.

4) Petitioner was denied a fair and impartial jury because the potential jurors were not individually sequestered during voir dire examination.

5) Confessions made by the defendant improperly were admitted into evidence.

6) The trial court prevented petitioner from defending against the charges made against him and established an irrebutable presumption on specific intent in the State's favor by limiting improperly his ability to present psychiatric testimony.

6A) Petitioner was deprived of due process by his exclusion from a critical portion of the trial.

7) The trial court improperly admitted into evidence various inflammatory and prejudicial photographs.

8) Prosecutorial misconduct rendered petitioner's trial fundamentally unfair.

9) The trial court improperly called the jury's attention to petitioner's failure to testify during the guilt phase of his trial.

10) Petitioner was deprived of effective assistance of counsel.

11) Petitioner was improperly sentenced to death on the basis of a single aggravating circumstance that merely echoed an element of the underlying crime for which he was convicted.

12) Remarks made during the trial concerning judicial review of the jury's recommendation of a death sentence improperly reduced the jury's sense of responsibility for the penalty imposed.

13) The trial court failed to instruct the jury that it could recommend a sentence of life imprisonment even if it found the existence of one or more aggravating circumstances and no mitigating circumstances.

14) During its instructions to the jury following the sentencing phase of the trial, the trial court failed to define for the jury the term "mitigating circumstance".

15) The trial court failed to guide the jury regarding the function to be played by mitigating circumstances in determining what sentence to recommend.

16) Petitioner's sentence is excessive and disproportionate and cruel and unusual.

17) Petitioner's sentence is arbitrary and capricious.

18) Petitioner's sentence is invidiously discriminatory.

19) Capital punishment is an excessive penalty.

20) The cumulative effect of violations of petitioner's rights is in itself a violation of petitioner's constitutional rights.

STATEMENT OF THE FACTS

On July 23, 1981, at about 7:00 P.M., a traffic accident occurred on Interstate 10 in Madison County, Florida. Trooper Homer Melgaard investigated the accident, which involved a disabled truck hit in the rear by an automobile, despite the truck driver's efforts to flag traffic. Witnesses at the scene advised Trooper Melgard that two men walking down the road had been in the automobile. One of them, Lane C. Nelson, was arrested for operating a motor vehicle under the influence of alcoholic beverages and both he and his companion, Robert Wihelm, were taken to the Madison County jail. Because Trooper Melgaard had to wait for a wrecker, the three of them reached the jail between 8:30 and 8:45 P.M. Melgaard requested a breathalyzer test on Nelson which showed a .24 reading. In the course of doing his paperwork on the accident report, trooper Melgaard engaged Nelson in a general conversation and inquired about the ownership of the vehicle. Nelson said he had borrowed the rented automobile from a friend in

Louisiana to go to the store. During the conversation, Nelson volunteered: "Looking at me, you do not think I would kill anybody." At this point, Trooper Melgaard ended the conversation and summoned Officer William Pheil, who gave Nelson his Miranda rights at approximately 10:00 P.M. After those rights were fully explained and Nelson signed a waiver, the officers began to question him.

Nelson had been hitchhiking to New Orleans when he was picked up by Beauvais Randall in Bunkie, Louisiana. Randall, apparently a transvestite, was dressed like a woman. On their way to New Orleans, Randall, sensing the defendant had little money, offered to pay Nelson $50.00 to take pictures of him in women's clothing. Following their arrival at Randall's apartment in Jefferson Parish, the two men went to sleep. Randall slept in his bedroom and Nelson slept on the living room couch.

Nelson was still sleeping the next morning when he was awakened by Randall, who was dressed in a black negligee. Randall demanded that the defendant begin the proposed photography session immediately. He asked Nelson to bind him with ropes in various positions that were modeled after certain magazine photographs and then to take the photographs of him in those positions. During much of this period Randall used a falsetto voice and, as part of his sexually deviate nature, accused the defendant several times of planning to beat or even kill him. Lane Nelson was repulsed by Randall's behavior, but nonetheless agreed to do as he was asked in return for the $50.00 he had been promised.

After one or two hours of the photography session, defendant asked Randall to advance him $20.00 from the proposed $50.00 payment so that he could buy something to drink. Randall agreed, and Lane Nelson went to a nearby convenience store, where he purchased two six-packs of 16-ounce cans of beer, and a pint of vodka. During the remainder of the afternoon, Nelson consumed all of these alcoholic beverages.

One or two hours after Nelson went to the store, Randall stated that he wished to perform oral sex on him. When the defendant hesitated, Randall offered to pay him. Nelson, who had not had any previous homosexual encounters, was extremely distressed by this occurrence, but he was so intoxicated and depressed by this time, that he let Randall do as he pleased.

Shortly after this incident, Lane Nelson and Randall left the apartment to go to a nearby Pizza Inn, where Nelson consumed more alcohol, specifically, an entire pitcher of beer. During their time at the restaurant Randall told Lane Nelson a series of stories, trying to impress upon Nelson that Randall was almost uncontrollably violent. They then returned to the apartment, at which point Nelson decided he wanted to wash his clothes in the complex's laundromat. However, before he left to do the laundry, Randall asked that the defendant tie him to the bed and leave him there.

While doing his laundry, Lane Nelson finished the last of the beer and the vodka and began to think of possible methods of escaping from Randall, and his sexual practices, as well as his apparently violent nature. He recalled that Randall previously had explained that the car in which they had been riding was a rental vehicle being paid for by Randall's employer and that the car had not been returned in a timely fashion to the rental company. Lane Nelson decided to use the car to get away from the situation.

At about 6:30 P.M. that same evening, Lane Nelson returned to the apartment from the laundromat in a drunken, agitated state and informed Randall, who still was tied to the bed, that he planned to take the car and leave the New Orleans area with it. Randall protested in a falsetto voice and accused the defendant of wanting to kill him. At this point Lane Nelson "flipped out...and just stabbed him" with a knife. Randall asked for medical help, but Nelson stabbed him several more times because he did not want to "see him

in pain or nothing." Randall died as a result of the stab wounds.

Following the stabbing, Lane Nelson took Randall's car keys and about $65.00 from the apartment and began to drive toward what he believed was Florida. After about two hours of driving drunkenly, Nelson fell asleep at a roadside rest area. Nelson learned the next morning that he had been driving west, rather than east, so he changed his direction and headed towards the Florida Gulf Coast. At about 7:00 P.M. that evening the car, holding Lane Nelson and a hitchhiker, collided with the rear of a disabled truck on Interstate 10 in Madison County, Florida. This is when Lane Nelson was arrested for operating a motor vehicle under the influence of alcoholic beverages.

Subsequently, the defendant was charged by indictment in Jefferson Parish, Louisiana with the crime of first degree murder. After a trial by jury he was found "guilty" as charged and received the death penalty.

CLAIM I

Defendant's first claim is that the jurors in his case were improperly disqualified for cause.

Defendant asserts that juror LaCrouts was improperly disqualified for cause. Juror LaCrouts stated that she would be able to convict the defendant if the State had proven his guilt beyond a reasonable doubt, but she might not be able to consider imposing the death penalty. Defendant claims that the exclusion of juror LaCrouts solely because of her conscientious or religious scruples against the death penalty caused his trial jury to be unrepresentative and biased in favor of the prosecution. The issue of whether the exclusion of jurors from the guilt/innocence phase of a trial in a bifurcated trial system, who are not death qualified, results in juries which are more likely to convict, and whether the exclusion of such jurors denies the defendant his right to a trial by jury from a representative cross-section of the community was discussed by the United

States Supreme Court in Lockhart v. McCree, 106 S.Ct. 1758(1986). The United States Supreme Court held that States are not prohibited from death qualifying juries in capital cases. The Court stated that in order to find that a jury does not represent a fair cross section of the community, a distinctive group in the community must have been systematically excluded. In the case at bar there was no distinctive group which was excluded from defendant's jury; therefore, defendant was tried by a jury which was representative of the community at large.

Defendant claims that juror Kippers should not have been excused for cause because the juror informed the Court that he would give the defendant a bouquet of flowers "if he murdered a queer." Trial transcript, January 5, 1982, p.174, lines 20-22; p.175, lines 1-2. It is defendant's contention that the Court should have allowed juror Kippers to be questioned further and informed that he had a duty to view the case impartially and put aside his personal views, before he was excused for cause. A review of the record shows that no objection was made by defense counsel when juror Kippers was excused. Under LSA-C.Cr.P. Article 841, an error cannot be availed of after verdict unless it was objected to at the time of its occurrence. Therefore, the defendant is barred from asserting this claim.

Defendant contends that the failure of the Court to sequester jurors individually during voir dire questioning prejudiced the defendant. Defendant states that the jurors were dissuaded by peer pressure and fear of embarrassment from responding truthfully to the questions asked of them. A review of the record reveals that the jurors were allowed to individually approach the bench, if they so desired, and speak privately with the Court. Therefore, this claim is unsubstantiated.

Accordingly, the Court finds that defendant's first claim is without merit.

CLAIM II

In defendant's second claim he contends that the State was improperly allowed to exercise a peremptory challenge against a juror who had already been sworn in. This issue was fully litigated on appeal and found to be without merit. State v. Nelson, 459 So.2d 510, at p.515(La.1984). Accordingly, this Court finds the defendant's second claim without merit.

CLAIM III

Defendant's third claim is that the trial court interfered with the voir dire interrogation of the jury.

As an example, defendant cites the incident concerning juror LaCrouts. Juror LaCrouts informed the Court that if the defendant were convicted she would not be able to consider imposing the death penalty upon him. It is defendant's contention that following this remark by the juror, the Court restricted defense counsel's examination of the juror and immediately excused the juror. A review of the record reveals that the Court allowed defense counsel to pursue questioning juror LaCrouts in order to determine the reasons why she was unable to consider imposing the death penalty. Trial transcript, January 5, 1982, pgs.243-247. At one point the Court asked, "Does anybody wish to ask any questions?" Trial transcript, January 5, 1982, p.246, lines 9-10.

Defendant also asserts that there were several other occasions, similar to the incident with juror LaCrouts in which the trial court restricted the scope of examination of the jurors. A thorough review of the record shows that this claim is unsubstantiated.

Accordingly, the Court finds defendant's third claim without merit.

CLAIM IV

In defendant's fourth claim he asserts that he was denied a fair and impartial jury because the potential jurors were not individually sequestered during voir dire examination. It is defendant's contention that since the

jurors were questioned in front of the entire jury pool they were not able to answer the questions truthfully because of peer pressure and the fear of embarrassment.

In accordance with Louisiana jurisprudence, the burden is on the defendant to show special circumstances indicating why individual voir dire is warranted. State v. Monroe, 397 So.2d 1258(La.1981), cert. denied, 103 S.Ct. 3571(1983), rehearing denied, 104 S.Ct. 36(1983); State v. Dominick, 354 So.2d 1316(La.1978). Defendant alleges that his case necessitated inquiry into sensitive topics such as homosexuality, sexual deviation and perversion. Therefore, individual voir dire was necessary.

The record shows that jurors were individually allowed to approach the bench and ask or answer questions. There was no embarrassment because the jurors had an opportunity to confer with the Court in private.

Accordingly, the Court finds the defendant's fourth claim without merit.

CLAIM V

Defendant's fifth claim is that confessions made by the defendant were improperly admitted into evidence. This issue was fully litigated on appeal and found to be without merit. State v. Nelson, 459 So.2d 510, at pgs.514-515 (La.1984). Accordingly, this Court finds the defendant's fifth claim without merit.

CLAIM VI

In defendant's sixth claim he contends that the trial court prevented him from defending against the charges made against him and established an irrebutable presumption on specific intent in the State's favor by improperly limiting his ability to present psychiatric testimony.

This issue was fully litigated on appeal and found to be without merit. State v. Nelson, 459 So.2d 510, at pgs. 516-517(La.1984). The Supreme Court of Louisiana held:

> ...Evidence of a mental defect which does not meet the M'Naughten definition of insanity cannot negate a specific intent

> to commit a crime. State v. Rideau, 193 So.2d 264(1966).
>
> Defense counsel focused his inquiry on whether defendant on the day of the murder had the mental capacity to form the requisite specific intent to murder. The trial court disallowed questions designed to elicit expert opinion about defendant's ability to have a specific intent to murder on the day of the crime. The court agreed that the experts could be asked hypothetical questions based on the facts in evidence about Nelson and specific questions about his mental capacity at the time of the offense. Defense counsel refused to accept the court's parameters for his questioning.

This Court declines to review the constitutionality of the above ruling rendered by the Supreme Court of Louisiana in this matter.

Accordingly, the Court finds defendant's sixth claim without merit.

CLAIM VIA

In defendant's claim six A, defendant asserts that he was deprived of due process by his exclusion from a critical portion of the trial.

The portion of the trial defendant refers to is discussions between defense counsel, the State and the Court. A review of the record and trial transcript shows that these discussions, which were either in chambers or at the bench, consisted solely of legal argument between the attorneys and the Judge. Therefore, the Court finds that it was not necessary that defendant be present at this non-critical portion of the trial.

Accordingly, the Court finds that defendant's claim six A is without merit.

CLAIM VII

Defendant's seventh claim is that the trial court improperly admitted into evidence various inflammatory and prejudicial photographs.

This issue was fully litigated on appeal and found to be without merit. State v. Nelson, 459 So.2d 510, at p. 516 (La.1984). The Supreme Court of Louisiana stated that "The

probative value of the photographs is not outweighed by their prejudicial effect."

Accordingly, the Court finds defendant's seventh claim without merit.

CLAIM VIII

In defendant's eighth claim he asserts that prosecutorial misconduct rendered his trial fundamentally unfair.

Defendant argues that during voir dire examination the prosecutor referred to photographs, which the jurors would view during the course of the trial, as distasteful and gory. It is defendant's contention that the prosecutor began the trial with an emotional appeal to the jurors.

Defendant states that during voir dire examination, the prosecutor told the jurors that during the trial they would have to make a decision concerning the defendant's life. Defendant argues that this comment made it appear to any of the jurors chosen that they would have to find defendant guilty of first degree murder.

Defendant contends that during opening statement the prosecutor referred to prejudicial material that she knew would not and could not be admitted into evidence and by doing this, she inflamed the jury's passion against the defendant. Defendant argues that during the State's rebuttal argument, the prosecutor tried to impugn defendant's character by referring to the victim as a degenerate and implying that the defendant was also a degenerate.

In Louisiana jurisprudence before an allegedly prejudicial argument requires reversal, the reviewing court must be thoroughly convinced that the jury was influenced by the remarks and that such remarks contributed to the verdict. State v. Byrne, 483 So.2d 564 (La.1986), rehearing denied, 107 S.Ct. 243 (1986); State v. Jarman, 445 So.2d 1184 (La.1984).

The Supreme Court of Louisiana and the United States Fifth Circuit Court of Appeals have previously held that erroneous statements by the prosecution during closing argument would constitute harmless error in light of the trial court's curative admonition to the jury and the strength of evidence against the defendant. U.S. v. Nation, 701 F.2d 31 (5th Cir.1983), cert.denied 104 S.Ct. 175(1983); U.S. v. Grapp, 653 F.2d 189(5th Cir.1981); State v. Pierce, 422 So.2d 1157(La.1982); State v. Felde, 422 So.2d 370(La.1982), 103 S.Ct. 1903(1983).

At one point in the trial, the prosecutor during his rebuttal argument in response to defense's closing argument stated that defense counsel's "function in life, or with this defendant, is to make inside look out, black look white, up seem down - confuse and befuddle the issue, whatever you want to do." Trial transcript, January 7, 1982, p.101, lines 20-22. The court instructed the jury to disregard the remark and the prosecutor apologized. The Supreme Court of Louisiana stated, "Any influence from the improper remarks was cured by the precautionary instruction." State v. Nelson, 459 So.2d 510 at p.517(La.1984).

Defendant asserts that remarks made by the prosecutor during voir dire examination, opening statement and rebuttal argument were prejudicial and unduly influenced the jury. This argument has no merit in light of the fact that the court gave the following instructions to the jury:

> Statements and arguments made by the attorneys are not evidence. In the opening statements, the attorneys are permitted to familiarize you with the facts they expect to prove. In closing arguments the attorneys are permitted to present for your consideration their contentions regarding what the evidence has shown or not shown and what conclusions they think may be drawn from the evidence. The opening statements and the closing arguments are not to be considered as evidence.
>
> You are not to be influenced by sympathy, passion, prejudice, or public opinion. You are expected to reach a just verdict.

Trial transcript, January 7, 1982, page 105, lines 2-10.

The Court has thoroughly reviewed the entire trial transcript and is of the opinion that the improper remarks complained of by the defendant did not result in any prejudice to the defendant, in light of the Court's admonition and instructions to the jury and the strength of evidence against the defendant.

Accordingly, the Court finds defendant's eighth claim without merit.

CLAIM IX

In defendant's ninth claim he contends that the trial court improperly called the jury's attention to his failure to testify during the guilt phase of the trial.

A review of the trial transcript reflects that after the Bill of Indictment was read the Court read La.R.S.14:30 and its responsive verdicts to the jury. The Court then informed the jury of the manner in which the trial would proceed. The Court stated, "Second, the State will then introduce evidence intended to support the charges contained in the Bill of Indictment which you heard read a moment ago. Third, after the State has presented its evidence, the defendant may also present evidence, but the defendant is not required to do so." Trial transcript, January 6, 1982, page 31, lines 18-26. It is a correct statement of law that the defendant is not required to present evidence. Defendant in no way could be prejudiced by this statement made by the Court.

Defendant contends that a part of the Court's instructions given the jury before their deliberation referred to the petitioner's right to remain silent and his failure to testify. The Court's instruction was as follows: "The defendant is not required by law to call any witnesses or produce any evidence. The defendant is not required to testify. No presumption of guilt may be raised and no inference of any kind may be drawn from the fact that the

defendant did not testify." Trial transcript, January 7, 1982, p.105, lines 11-13. The preceeding charge which was given to the jury in the instant case is proper. Nowhere did the Court comment on defendant's failure to testify. Defendant was not prejudiced by this statement made by the Court.

Accordingly, the Court finds defendant's ninth claim without merit.

CLAIM X

In defendant's tenth claim he contends that he was deprived of effective assistance of counsel.

The Court has chosen to address this claim in relation to the two phases of trial: the guilt/innocence phase and the sentencing phase.

A. The guilt/innocence phase

This Court has thoroughly reviewed the court record, the trial transcript, and the transcript of the evidentiary hearing to determine if the defendant was deprived of effective assistance of counsel according to the standard set forth by the United States Supreme Court in Strickland v. Washington, 104 S.Ct. 2052(1984). A defendant has the burden of proving that the ineffective assistance of counsel which he alleges not only provided the possibility of prejudice, but that it worked to his actual and substantial disadvantage in the outcome of the case. Defendant has not met this burden of proof in the instant case.

Assuming arguendo, that minor errors were made by the defense counsel during the guilt/innocence phase, these errors could have had only an insubstantial and insignificant impact on the jury. Furthermore, defendant's guilt was so irrefutably evident that an acquittal would have been an unreasonable event based upon the entire record.

Accordingly, the Court finds defendant's tenth claim as regarding the guilt/innocence phase in this case to be without merit.

B. The sentencing phase

It is the opinion of this Court that a capital sentencing hearing in Louisiana, such as the one in this case, is very similar to a trial. In Strickland v. Washington, 104 S.Ct. 2052 (1984) the United States Supreme Court reviewed a petition for habeas corpus filed by a defendant who had received the death penalty for a murder conviction and asserted that he had been denied effective assistance of counsel. The Supreme Court held:

> A capital sentencing proceeding like the one involved in this case, however, is sufficiently like a trial in its adversarial format and in the existence of standards for decision..., that counsel's role in the proceeding is comparable to counsel's role at trial - to ensure that the adversarial testing process works to produce a just result under the standards governing decision. For purposes of describing counsel's duties, therefore, Florida's capital sentencing proceeding need not be distinguished from an ordinary trial. Strickland, 104 S.Ct. at 2064.

Therefore, this Court will review defense counsels' actions at the sentencing phase of defendant's trial, according to the duties expected of counsel at trial.

Defense counsel presented only three witnesses at the sentencing phase of the trial. The witnesses were: Dr. Shraberg, Linda Nelson, who is the defendant's sister, and the defendant. One of the defense counsel, Mr. Samuel Stephens read to the jurors the testimony of Dr. Richoux, which had been transcribed at the defendant's sanity hearing. At the evidentiary hearing in this court, Mr. Samuel Stephens was questioned as to why Dr. Richoux was not present at the sentencing phase of the trial. His reply was "Because I believe he was unavailable and I (did) not have him under a continuing subpoena." Evidentiary hearing transcript, November 11, 1986, p.126, lines 23-25.

At the evidentiary hearing, Mr. Samuel Stephens testified that in his opinion the defendant had committed the crime of manslaughter. Therefore, his preparation for trial consisted of a manslaughter defense. Evidentiary

hearing transcript, November 11, 1986, p.110, lines 15-22; p.111, lines 14-18. It is clear from a reading of the trial transcript and the information obtained at the evidentiary hearing that defense counsel had not prepared for the penalty phase of the trial because they thought there would be none.

In Strickland v. Washington, 104 S.Ct. 2052(1984) the United States Supreme Court developed a two pronged test to determine if counsel's assistance was so defective as to require reversal of a conviction or death sentence.

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Strickland, 104 S.Ct. at 2064.

In assessing counsel's performance hindsight is not an accurate tool.

> A court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct. Strickland, 104 S.Ct. at 2065.

The facts of this particular case are that Lane Nelson had been indicted for the first degree murder of Beauvais Randall. At trial, defense counsel presented the defense of intoxication under La.R.S. 14:15. However, the jury found that the defendant's intoxicated condition did not preclude the presence of the specific criminal intent necessary for the commission of first degree murder. The jury found the defendant guilty of first degree murder.

Once the defendant was found guilty of first degree murder it was the role of defense counsel to present as much mitigating evidence as they could so that their client would have a chance to escape the death penalty. It seems logical that they should have realized that there was a possibility the defendant may be convicted of first degree murder and

that they would have investigated and thoroughly prepared to present the mitigating circumstances in favor of the defendant, one of those circumstances being the defendant's intoxication. However, this was not the case as demonstrated by the testimony of defense attorney, Mr. Samuel Stephens, at the evidentiary hearing held in this matter.

When asked, "Would you describe the pre-trial investigations you did in the case?" Mr. Samuel Stephens replied, "It was not very much. I did not think it was too complex. The whole case against Lane revolved mostly around the statements that he had given the police authority from Jefferson Parish and in the state of Florida. The whole defense was to try to attack that statement and failing that try to give some justification for his actions." Evidentiary hearing transcript, November 11, 1986, p.104, lines 20-28; p.105, line 3.

Mr. Samuel Stephens was asked the following question, "During the sentencing phase of the trial what did you do to prepare for the sentencing phase of the trial?" His reply, "Interviewed Mr. Nelson's sister who was in California and talk with Lane here and generally going over the family background and trying to show the jury that he did not have any criminal past." Evidentiary hearing transcript, November 11, 1986, p.122, lines 23-29; p.123, line 3.

Defense counsel only presented one witness to show defendant's lack of criminal past - his sister. Defense counsel's examination of defendant's sister was superficial and ineffective. He asked the witness if she and the defendant grew up together in their parent's home to which she replied yes. Defense counsel asked her about the deaths of their parents and defendant's reaction to those deaths. Defense counsel asked defendant's sister, Linda Nelson, if she had ever known her brother to be a violent person to which she replied no. Defense counsel never even questioned the witness concerning defendant's lack of a criminal past.

In the evidentiary hearing which was held in this matter, the Court for the first time learns of defendant's background. The Court is made aware that the defendant grew up in an environment where his parents were alcoholics and they physically abused each other and his mother abused him. Evidentiary hearing transcript, November 13, 1986, p.60, lines 5-24; p. 77, lines 17-29; p.78, lines 1-15. This information comes from the testimony of Barbara Langedyk, the defendant's aunt. She was not contacted by either of the defense counsel to testify at the sentencing phase of the defendant's trial. Had she been contacted she would have been willing to come to Louisiana to testify. Evidentiary hearing transcript, November 13, 1986, p.88, lines 27-29; p.89, lines 1-4.

Linda Benisek (formerly Linda Nelson), the defendant's sister, testified in her deposition which was held on June 14, 1986 in Torrance, California that the defendant became involved with drugs as an adolescent. Deposition of Linda Benisek, June 14, 1986, p.12, lines 20-28; p.13, lines 1-12.

At this same deposition, Linda Benisek testified that when the defense counsel phoned her and asked her to come to New Orleans and testify at her brother's trial he didn't explain what she might be testifying about. She also testified that at the time she was contacted by phone the defense counsel never inquired if there were any other witnesses who might be able to testify for the defendant. Deposition of Linda Benisek, June 14, 1986, p.22, lines 19-28; p.23, lines 1-3.

Nancy Sullivan, a friend of the defendant's testified at the evidentiary hearing that the defendant had a drinking problem. Evidentiary hearing transcript, November 13, 1986, p.138, lines 18-20.

The fact that the defendant had grown up in an abusive home, that his parents were alcoholics, and that he had problems with drugs and alcohol was never revealed to the jurors at the sentencing phase of defendant's trial. The

information was not available because the defense counsel did not investigate defendant's background and had made no attempts to contact friends of the defendant from Florida and the Army and family members, other than defendant's sister.

During the evidentiary hearing the following colloquy took place between Mr. Samuel Stephens and Mr. Robert McGlasson, one of the attorneys representing the defendant in his application for post-conviction relief:

> Q. Were you aware that prior to the trial of other members of Mr. Nelson's family and other friends.
>
> A. He mentionad he had relatives out west.
>
> Q. Are you aware that he had a grandmother in California?
>
> A. I believe he told me he did.
>
> Q. Did you interview or attempt to speak to her?
>
> A. No.
>
> Q. Are you aware that he had an aunt in California?
>
> A. He told me.
>
> Q. Did you interview or attempt to speak with her?
>
> A. No.
>
> Q. Were you aware of any other family members or friends?
>
> A. I knew he had a girlfriend in Florida.
>
> Q. Did you speak with her or interview her?
>
> A. No.

Evidentiary hearing transcript, November 11, 1986, p. 123, lines 4-22.

"It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to guilt and to a degree of guilt or penalty." American Bar Association Project on Standards for Criminal Justice, Standards

Relating to the Prosecution Function and the Defense Function, Sec.4.1(tentative draft 1970). The United States Court of Appeals, Eleventh Circuit in Goodwin v. Balkcom, 684 F.2d 794 (1982) held that "At the heart of effective representation is the independent duty to investigate and prepare. Counsel have a duty to interview potential witnesses and make an independent examination of the facts, circumstances, pleadings and laws involved." Id. at p.805. The United States Supreme Court stated in Strickland, 104 S.Ct. at 2066, "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." A review of the record and all transcripts demonstrates that defense counsel for Lane Nelson made practically no efforts to develop information which would have been helpful to the defendant at the sentencing phase of his trial.

Mr. Samuel Stephens testified at the evidentiary hearing that the only experts he intended to use at the sentencing phase of the trial were the two court-appointed psychiatrists. Evidentiary hearing transcript, November 11, 1986, p.124, lines 27-28; p.125, lines 3-5. Yet, defense counsel did not have Dr. Richoux under a continuing subpoena. Evidentiary hearing transcript, November 11, 1986, p.126, lines 22-26.

Prior to the trial of the defendant there were two sanity hearings held in this matter in accordance with C.Cr.P. Art. 650 since the defendant had entered a combined plea of "not guilty and not guilty by reason of insanity". On November 5, 1981 a sanity hearing was held to determine defendant's mental capacity at that time to assist his counsel in the trial of this matter. On November 12, 1981 a sanity hearing was held to determine the defendant's mental condition as of the time of the offense.

When Dr. Richoux was unavailable for the sentencing phase of defendant's trial, Mr. Samuel Stephens read the

psychiatrist's testimony from the sanity hearing which was held on November 12, 1981.

Defense counsel's examination of Dr. Shraberg at the sentencing phase of the trial was cursory and superficial. The Court finds that this may be related to their lack of preparation with the psychiatrist. At the evidentiary hearing, Dr. Shraberg was asked if he had participated in any discussions with counsel before he testified at the sentencing phase of defendant's trial. He said he spoke with defense counsel in the courtroom while the jury was out of the courtroom. Dr. Shraberg also stated that his complete testimony at the sentencing phase of the trial took only five or ten minutes. Evidentiary hearing transcript, November 11, 1986, p.83, lines 9-25.

Defense counsel did not question Dr. Shraberg concerning the mitigating circumstances in this matter. Mr. James Weidner questioned the psychiatrist by reading to him the testimony he had previously given in the sanity hearing held on November 12, 1981 and inquiring if this was still his opinion. Trial transcript, January 8, 1982, p.29, lines 16-29; p.30, lines 1-14. Dr. Shraberg's comments concerning what he was asked at the sentencing phase of the trial are as follows: "Defense counsel asked me a few simple questions concerning whether Mr. Nelson was depressed, intoxicated and grieving at the time of the crime, to which I answered affirmatively. They did not ask me to explain or elaborate upon any of these conclusions, nor did they ask me any questions concerning how these factors related to Mr. Nelson's actions and intentions at the time of the crime..." Attachments to Application for Post-Conviction Relief, Affidavit of Dr. Shraberg, Exhibit H, p.4.

It appears that defense counsel did not fully understand the meaning of the sentencing phase of the trial. Defendant had already been found sane. Defendant had already been found guilty of first degree murder. In the sentencing phase, it was defense counsel's responsibility to

present evidence favorable to the defendant so the jury would not sentence him to death.

Defense counsel failed to present mitigating evidence in accordance with La.C.Cr.P. Art. 905.5, Mitigating Circumstances. Sections a, b, and e apply to the case at bar.

> (a) The offender has no significant prior history of criminal activity;
>
> (b) The offense was committed while the offender was under the influence of extreme mental or emotional disturbance;
>
> (e) At the time of the offense the capacity of the offender to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication;

Defendant, Lane Nelson has met the first stage of the Strickland test - that counsel's performance was deficient and his errors were so serious that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment. The second stage of the Strickland test is that the defendant must show that the deficient performance prejudiced the defense. "The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 104 S.Ct. at 2068. When a defendant challenges the death sentence, such as Lane Nelson is in this case, "the question is whether there is a reasonable probability that, absent the errors, the sentencer - including an appellate court, to the extent it independently reweighs the evidence - would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." Strickland, 104 S.Ct. at 2069.

At the evidentiary hearing Dr. Shraberg explained in detail how alcohol intoxication affects the mental functioning of individuals. He discussed that intoxication

causes impairment in one's judgment and that one's impulse control may be reduced as a result of this impairment. Evidentiary hearing transcript, November 11, 1986, p.70, lines 3-15. It was his belief that Lane Nelson's impulse control was reduced due to alcohol intoxication and the amount of anger and grief which the defendant was experiencing at the time. Dr. Shraberg stated, "And, my opinion, unfortunately, the type of interactions that went on was rather bazaar (sic) and the interactions between the victim and Mr. Nelson more or less lit a fuse and having the alcohol was like gasoline had a fuse which caused the explosion." Evidentiary hearing transcript, November 11, 1986, p.71, lines 14-19.

At the evidentiary hearing in this matter, Dr. Richoux testified that he believed the defendant was grossly intoxicated by alcohol at the time of the offense. Evidentiary hearing transcript, November 11, 1986, p.154, lines 14-15. Dr. Richoux explained that alcohol may affect mental functioning in a variety of ways. Alcohol is a central nervous system depressant and diminishes many brain functions. In his testimony, Dr. Richoux stated:

> Basically, what we are talking about is this process by which urges, impulses, or feelings, which have originated in other sentries in the brain are monitored, examined by the higher cordical function and subject to censorship one might say. Higher cordical function enables the brain to sort out which feeling and impulses will be acted upon and which one won't. What impulses turn to behavior and what impulses simply remain impulses.
>
> Higher cordical function is suppressed or depressed by alcohol therefore alcohol removes inhibition. The most common example is the one that people joke about, someone's dancing with a lamp shade on his head. Presumably this occurred because this individual has the impulse to do or engage in this type of behavior when he's in a non-intoxicated state his higher cordical functions tell him not to because they take into account social morays and they take into account convention, embarrassment, and other complex psychological functions.
>
> When he's under the influence of alcohol that portion of the brain simply shuts down temporarily. Therefore, the impulses

> are free to turn into behavior in an uncensored, unmonitored way.
>
> Evidentiary hearing transcript, November 11, 1986, p. 156, lines 9-28; p.157, lines 3-15.

Dr. Richoux explained:

> It's my opinion that Mr. Nelson's intoxication at the time of the offense affected his conduct in a disinhibitory fashion consistent with what I described before concerning the affects of alcohol on brain functioning, and that is to remove the sensory or monitoring portion of the brain that prevents under normal circumstances when an individual is not intoxicated that person from acting on unacceptable impulses including violent impulses.
>
> I think there were obviously very rageful feelings present in Mr. Nelson and the effects of the alcohol was to disinhibit him to the point that those impulses turned into actions.
>
> Evidentiary hearing transcript, November 11, 1986, p.159, lines 24-28; p.160, lines 3-16.

At the evidentiary hearing, Dr. Richoux informed the court that the defendant had a "fairly traumatic upbringing". He gained most of this information from affidavits given by individuals who would have testified at the sentencing phase of the trial had they been asked to testify. Dr. Richoux testified that this type of information concerning the defendant's background is important because the defendant, "presents, as an adult, primarily his past character or personality type". Evidentiary hearing transcript, November 11, 1986, p.180, lines 27-28.

In the evidentiary hearing, Dr. Richoux was asked to explain how this type of crime could have occurred, since it was not typical of the defendant's passive dependent personality type. His reply:

> What he did, primarily by a very catastrophic coming together of two factors. The first one being his intoxication of alcohol. This is disinhibitor or releasing factor, you might say. The other thing are the emotions that I also described previously in relation to his life circumstances at that time. The way that they aggravated feelings of depression and rage they were part of his character all along but became much more intense in relation to breaking up with his common law wife and in

> relation to his mother's terminal illness and in relation to the particular behavior and appearance, dress, and so forth of the person who ultimately became the victim.
>
> Mr. Nelson felt depression, rage and all of these in extreme form and giving the releasing or disinhibiting effect of the alcohol those impulses and feelings got translated into his behavior in a violent fashion.
>
> Evidentiary hearing transcript, November 11, 1986, p.186, lines 14-28; p.187, lines 3-9.

It is apparent from the evidentiary hearing, that had defense counsel properly prepared to examine Dr. Shraberg at the sentencing phase of trial, he could have elicited the doctor's professional opinion concerning the defendant and his state of mind. It is Dr. Shraberg's opinion that the defendant was intoxicated, that he acted spontaneously, and was in a state of severe emotional distress at the time of the commission of the offense.

It is also apparent that had Dr. Richoux been called upon to testify that he would have given his opinion concerning the defendant and his state of mind at the time of the offense. It was Dr. Richoux's professional opinion that the defendant was grossly intoxicated from alcohol at the time of the offense and that the defendant was experiencing an extreme emotional disturbance at the time of the offense. The jury did not get to hear any of this information.

No attempt was made by defense counsel to obtain possible mitigation testimony from family members, other than the defendant's sister, or individuals who knew Lane Nelson from work, the Army or Florida. These individuals would have been willing to testify concerning the defendant's background had they been asked to by counsel: Members of the defendant's family, Barbara Langedyk, his aunt and Josephine Langedyk, his grandmother; Rick Diaz, who worked with the defendant in California; friends of the defendant's from Florida who were Jean Marie Joyner, Nancy Sullivan and Kim Kern; and Wendy Ann Brown, who was a friend of the defendant's from the Army. These individuals would

have demonstrated to the jury that the defendant had no significant prior history of criminal activity in accordance with C.Cr.P. Art. 905.5(a).

In Tyler v. Kemp, 755 F.2d 741(1985), at p. 745, the United States Court of Appeals, Eleventh Circuit held, "The evolution of the nature of the penalty phase of a capital trial indicates the importance of the jury receiving adequate and accurate information regarding the defendant. Without that information, a jury cannot make the life/death decision in a rational and individualized manner." The United States Court of Appeals, Eleventh Circuit in Thomas v. Kemp, 796 F.2d 1322 (1986), at p. 1325, held "The key aspect of the penalty trial is that the sentence be individualized, focusing on the particularized characteristics of the individual."

The jury in the instant case was not able to make the life/death decision in a rational manner. The jury was given scant information in the penalty phase concerning Lane Nelson. Here, as in Tyler v. Kemp, 755 F.2d 741(1985), at p. 745, the death penalty which resulted in the instant case was robbed of the reliability essential to assure confidence in that decision.

This Court concludes that defendant has satisfied the prejudice prong of the Strickland standard. Defense counsels' failure to investigate and present sufficient mitigating evidence fell below an objective standard of reasonableness under prevailing professional norms. Strickland v. Washington, 104 S.Ct. at 2064.

Lane Nelson has established that the errors of his defense counsel were prejudicial to his defense. "There is a sufficient probability that effective counsel could have convinced a sentencer that the death sentence should not be given to undermine confidence in the outcome." King v. Strickland, 748 F.2d 1462 (1984), at p.1464-1465.

Here, as in Jones v. Thigpen, 788 F.2d 1101 (1986), at p. 1103, defense counsel either neglected or ignored

critical matters of mitigation at the point when the jury was to decide whether to sentence Lane Nelson to death. This failure was unreasonable, and it was prejudicial to the defendant in that there is a reasonable probability that had this evidence been presented, the jury would have concluded that death was not warranted. Strickland, 104 S.Ct. at pgs.2064-2069.

Accordingly, the Court finds defendant's tenth claim, regarding the sentencing phase of the trial, to have merit.

Having found that defendant's tenth claim has merit,

IT IS ORDERED BY THE COURT that the Application for Post-Conviction Relief as regards claim ten, be and the same is hereby granted vacating and setting aside defendant's original sentence.

IT IS FURTHER ORDERED BY THE COURT that this matter be set on the Court's docket within ninety days, by the State of Louisiana to retry the sentencing phase of the defendant's trial. If the State of Louisiana fails to schedule this trial within the allotted time period, the Court will resentance the defendant.

CLAIM XI

Defendant's eleventh claim is that he was improperly sentenced to death on the basis of a single aggravating circumstance that merely echoed an element of the underlying crime for which he was convicted.

The Supreme Court of the United States addressed this issue in Lowenfield v. Phelps, Secretary, Louisiana Department of Corrections, et al. Slip Opinion No. 86-6867, decided January 13, 1988, at p.II. The United States Supreme Court held "The death sentence does not violate the Eighth Amendment simply because the single statutory 'aggravating circumstance' found by the jury duplicates an element of the underlying offense of first-degree murder."

Accordingly, this Court finds the defendant's eleventh claim without merit.

CLAIM XII

In defendant's twelfth claim he asserts that remarks made during his trial concerning judicial review of the jury's recommendation of a death sentence improperly reduced the jury's sense of responsibility for the penalty imposed. This issue was fully litigated on appeal and found to be without merit. State v. Nelson, 459 So.2d 510 (La.1984), Assignment of Error Number Eleven, at p.518.

CLAIM XIII

Defendant's thirteenth claim is that the trial court failed to instruct the jury that it could recommend a sentence of life imprisonment even if it found the existence of one or more aggravating circumstances and no mitigating circumstances.

The Court chooses not to address this issue, as the Court has ordered that a new hearing be held in the sentencing phase of this trial.

CLAIM XIV

In defendant's fourteenth claim he contends that during the instructions to the jury following the sentencing phase of the trial, the trial court failed to define for the jury the term "mitigating circumstances".

The Court chooses not to address this issue, as the Court has ordered that a new hearing be held in the sentencing phase of this trial.

CLAIM XV

Defendant's fifteenth claim is that the trial court failed to guide the jury regarding the function to be played by mitigating circumstances in determining what sentence to recommend.

The Court chooses not to address this issue, as the Court has ordered that a new hearing be held in the sentencing phase of this trial.

CLAIM XVI

In defendant's sixteenth claim he asserts that his sentence is excessive and disproportionate and cruel and unusual.

The Court chooses not to address this issue, as the Court has ordered that a new hearing be held in the sentencing phase of this trial.

CLAIM XVII

Defendant's seventeenth claim is that his sentence is arbitrary and capricious.

The Court chooses not to address this issue, as the Court has ordered that a new hearing be held in the sentencing phase of this trial.

CLAIM XVIII

In defendant's eighteenth claim he contends that his sentence is invidiously discriminatory.

The Court chooses not to address this issue, as the Court has ordered that a new hearing be held in the sentencing phase of this trial.

CLAIM XIX

Defendant's nineteenth claim is that capital punishment is an excessive penalty.

The Court chooses not to address this issue, as the Court has ordered that a new hearing be held in the sentencing phase of this trial.

CLAIM XX

In defendant's twentieth claim he contends that the cumulative effect of violations of his rights is in itself a violation of his constitutional rights.

The Court chooses not to address this issue, as the Court has ordered that a new hearing be held in the sentencing phase of this trial.

Gretna, Louisiana, this 23rd day of March, 1988.

JUDGE

PLEASE SERVE:
Assistant District Attorney, Dorothy Pendergast

Assistant District Attorney, Joellen Grant

Mr. Charles L. Stern, Jr., Attorney for Defendant,
Stone, Pigman, Walther, Wittmann & Hutchinson
546 Carondelet Street, New Orleans, Louisiana 70130

Warden, Hilton Butler, Louisiana State Penitentiary
Angola, Louisiana 70712

Due to privacy concerns, Exhibit # 69 (b) in unredacted form is only available for Senators to review.

SUPPLEMENT TO STANDARD FORM 86 (SF-86)

(Attach additional pages if necessary)

1S. Please list names of all corporations, firms, partnerships or other business enterprises, and all nonprofit organizations and other institutions with which you are now, or during the past five years have been, affiliated, as an officer, owner, director, trustee, partner, advisor, attorney or consultant. In addition, please provide the names of any other organizations with which you were affiliated prior to the past five years that might present a potential conflict or appearance of conflict of interest with your prospective appointment. (Please note that in the case of an attorney's client listing, it is only necessary to provide the names of major clients and those that might present a potential conflict or appearance of conflict of interest with the prospective appointment).

NONE

2S. Please list all your interests in real property, other than a personal residence, setting forth the nature of your interest, the type of property and the address.

NONE

3S. Have you or any firm, company or other entity with which you have been associated ever been convicted of a violation of any Federal, state, county or municipal law, regulation or ordinance? If so, please provide full details.

NO

4S. Have you or any firm, company or other entity with which you have been associated ever been the subject of Federal, state or local investigation for possible violation of a criminal statute? If so, please give full details.

NO

5S. Have you ever been involved in civil or criminal litigation, or in administrative or legislative proceedings of any kind, either as a plaintiff, defendant, respondent, witness or party in interest? If so, please give full details identifying dates, issues litigated and the location where the civil action is recorded.

SEE ATTACHMENT #1

JUL-22-1994 10:20 FROM FBI NEW ORLEANS SQUAD 7 TO 8202324 F P.04
JUL-05-1994 11:04 FROM FI EW ORLEANS TO

65. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please give full details.

NO

73. Have you ever run for political office, served on a political committee or been identified in a public way with a particular organization, candidate or issue? Have any complaints been lodged against you or your political committee with the Federal Election Commission or state or local election authorities? If so, please describe.

SEE ATTACHMENT #2

85. Are you currently, or have you ever been, a member or office holder in any club or organization that restricts or restricted membership on the basis of sex, race, color, religion, national origin, age or handicap? If so, provide the name, address and dates of membership for each.

NO

89. Please identify any adults (18 years or older) currently living with you who are not members of your immediate family. Provide the names of those individuals, dates and places of birth, and whether or not they are United States citizens.

NONE

105. Is there anything in your personal life that could be used by someone to coerce or blackmail you? Is there anything in your life that could cause an embarrassment to you or to the President if publicly known? If so, please provide full details.

NO

I understand that the information being provided on this supplement to the SF-86 is to be considered part of the original SF-86 dated April 27, 1994 and a false statement on this form is punishable by law.

Signature

9B

ATTACHMENT 1

Clark, et al v. Edwards, et al.
86-435, U.S. District Court, Eastern District of Louisiana

Suit challenging the method of election of judges in Louisiana. All judges were sued as nominal parties; we were sued in our official capacity. Resolution: Jefferson Parish, the 24th Judicial District Court, established sub-districts wherein an individual candidate runs, as opposed to running throughout the entire parish as was previously the procedure.

24th Judicial District Court, Indigent Defender Board & Sam Dalton v. State of Louisiana, Governor Roemer, et al.
413-728, 24th Judicial District Court
Declaratory judgment on constitutionality of LSA-R.S. 15:144(B)(D). All judges were sued, we were sued in our official capacity.

Resolution: Supreme Court issued a TRO and remanded to lower court. At the request of the Chief Justice and all interested parties, we have deferred further proceedings pending resolution by the legislature.

Sierra, et al v. State of Louisiana, Governor Roemer, et al
#405-429, 24th Judicial District Court
Constitutionality of LSA-R.S. 13:994(B)(1),(2),(3). This concerned a Louisiana statute which assessed a 2% fee on bail bonds. All judges were sued as nominal parties in their official capacity.

Pending.

Augustus, et al. v. State of Louisiana, Governor Roemer, et al
#90-4667 U. S. District Court, Eastern District of Louisiana

Constitutionality of LSA-R.S. 13:994(B)(1),(2),(3). This concerned a Louisiana statute which assessed a 2% fee on bail bonds. All judges were sued as nominal parties in their official capacity. This is virtually the same claim as Sierra, et al v. State of Louisiana, Governor Roemer, et al except it was filed in Federal court.

Injunction granted.

9c

(Attachment 1 continued)

De Grange, et al v. 24th Judicial District Court
89-3535, U.S. District Court, Eastern District of Louisiana

All judges were sued in their official and individual capacity. Petitioners, Shurmaine De Grange and Ida Williams alleged discrimination. Both petitioners were former employees of the late Judge Lionel Collins. After his death, De Grange, his former law clerk, alleged she was not hired as a hearing officer in Domestic Court because of discrimination. Ida Williams, his former secretary, alleged discrimination because her services were not retained by the newly elected judge of the division.

Resolution: The matter was settled without any admission of liability or responsibility.

9D

ATTACHMENT 2

District Court Judge — January 1, 1985 - Present
State of Louisiana
Division A, 24th Judicial District Court

District Court Judge, Ad Hoc — August 24, 1984 - January 1, 1985
State of Louisiana
Division A, 24th Judicial District Court

I was first elected without opposition in 1984 for the term to commence January 1, 1985. At the request of the Louisiana Supreme Court, because the Division "A" seat was vacant, I was appointed to sit as the Ad Hoc Judge, effective August 24, 1984. I was re-elected without opposition in 1990 for the term commencing January 1, 1991.

4E

FD-302 (Rev. 3-10-82)

-1-

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 8/18/94

Judge THOMAS PORTEOUS, State Court Judge for the 24th District of Louisiana, located in Gretna, Louisiana (LA), telephonically contacted this interviewing Agent in the New Orleans Office of the Federal Bureau of Investigation (FBI). PORTEOUS advised that he had telephoned his office in Gretna, LA, from Baton Rouge, LA, where he was teaching a class. PORTEOUS had called in to request any messages, and was advised that [redacted] had been interviewed earlier that day by FBI Agents of New Orleans office. As a result, she was noticeably unnerved. PORTEOUS had been advised by [redacted] of the nature of the interview, and stated that he seemed to recall being involved in bond reduction matters involving former criminal defendants, [redacted] and [redacted]. He further stated that he seemed to recall that [redacted] bond was originally set at a very high sum of money, but upon request by the arresting officer, name unrecalled, he (PORTEOUS) agreed to reduce the bond considerably. PORTEOUS also absolutely denied that any money was received by him as a fee for agreeing to reduce the bond in the [redacted] matter.

With regards to the [redacted] matter, PORTEOUS stated he recalled agreeing to reduce her bond after obtaining information about the complainant, which convinced him that the charges against her did not merit such a high bond being set.

Investigation on 8/17/94 at New Orleans, Louisiana (Telephonically) File # 77A-HQ- F

by SA S /glm Date dictated 8/18/94

FD-302 (Rev. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 8/18/94

Judge THOMAS PORTEOUS, Louisiana State Court Judge for the 24th Judicial District, was interviewed in his office located in Gretna, Louisiana (LA), regarding information received from confidential source, NO T-6, on August 8, 1994.

PORTEOUS stated that he was somewhat aware of the nature of the inquiry due to [redacted], having been interviewed by this interviewing Agent on the previous day. [redacted] had related to Judge PORTEOUS a summation of that interview. PORTEOUS was initially asked if he recalled having been involved in a bond reduction matter for a criminal defendant named [redacted], who was arrested by the Jefferson Parish Sheriff's Office on a cocaine charge in March, 1987. Judge PORTEOUS could not specifically recall a bond reduction matter involving this named individual, but after being provided with some of the information obtained from NO T-6, PORTEOUS seemed to recall that this individual, who already had an extensive criminal history involving narcotics violations, had a very high bond initially set. Upon request from the arresting officer or possibly Deputy Chief RICHARD RODRIGUE, who is in charge of Criminal Detectives for the Jefferson Parish Sheriff's Department (JPSD), he reluctantly agreed to reduce the bond. PORTEOUS stated that if the incident that he is recalling is in fact an incident that involved the named subject, [redacted], the agreement to reduce the bond was based on reporting from a JPSD officer that [redacted] PORTEOUS further stated that if this was the incident he is attempting to recall, then Assistant District Attorney PAT MC GINNITY, (who is currently in private practice as a criminal defense attorney, with office located on Girod Street, New Orleans, LA, telephone [redacted] would have been involved in the bond reduction discussion. PORTEOUS stated that it is routine for the prosecuting attorney along with the arresting officer to be involved in a discussion regarding any bond reductions. PORTEOUS could not recall any involvement of a [redacted] in monetary transactions regarding the bond reduction. Furthermore, PORTEOUS categorically denied that

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Investigation on 8/18/94 at Gretna, Louisiana File # 77A-HQ- [redacted]

by [redacted] /glm Date dictated 8/18/94

FD-302a (Rev. 11-15-83)

77A-HQ- F

Continuation of FD-302 of JUDGE THOMAS PORTEOUS , On 8/18/94 , Page 2

he was paid a sum of $10,000, or for that matter, any sum in exchange for an agreement to reduce the bond for [redacted].

With regards to an allegation that PORTEOUS had received $1,500 to reduce a bond in a matter involving a [redacted], who had been arrested for theft, PORTEOUS, already having been aware of this allegation from previous discussion with [redacted] (as referenced above), had the criminal file available for review. PORTEOUS pointed out that [redacted] bond had originally been set at $300,000, based on a mere two counts of theft. The bond was initially set by Judge JOHN MOLAISON. Upon review of the matter, PORTEOUS agreed to reduce the bond to a $50,000 property bond. He recalls ADAM BARNETT being the bondsman in this matter, a trusted bondsman who he had known for a long time. PORTEOUS stated that he felt, based upon the Jefferson Parish jails being extremely overcrowded at that time (last year), the fact that the details of the arrest did not appear to warrant such a high bond, along with limited criminal history of the defendant, this situation warranted a reduction in bond. PORTEOUS pointed out that the bond was reduced to a $50,000 property bond. Although it was later shown that the surety was insufficient for the amount of the bond, the defendant appeared in court for every hearing, and was ultimately given credit for time served in jail, and placed on probation. He recalled the New Orleans Times Picayune newspaper as making an issue of this technical error in allowing a property bond to be set when there was insufficient surety. PORTEOUS stated that although there was a technical error here, it proved to be a harmless error, in light of the fact that the defendant never failed to appear for any of her court hearings. However, PORTEOUS again categorically denied that he had been given $1,500 or any amount of money to reduce the bond for [redacted].

Judge PORTEOUS also denied that he had ever owned a yacht either individually or jointly with others, and furthermore, denied that he had ever owned any type of boat. He also denied that he had ever been present when cocaine, marijuana, or any other illegal narcotic was being utilized. He also denied that he had ever used any illegal narcotic personally.

Lastly, Judge PORTEOUS denied that he had ever signed any bail bonds "in blank;" and stated that he was unaware of anything in his background that might be the basis of attempted

FD-302a (Rev. 11-15-83)

77A-HQ- F

Continuation of FD-302 of JUDGE THOMAS PORTEOUS , On 8/18/94 , Page 3

influence, pressure, coercion or compromise and/or would impact negatively on his character, reputation, judgement or discretion.

INTELLIGENCE REPORT

CONFIDENTIAL

November 9, 1994

SUBJECT: (1) AUBRY WALLACE N/M [redacted]
(2) LOUIS MARCOTTE
(3) JUDGE THOMAS G. PORTEOUS, JR.
(4) BAIL BONDS UNLIMITED

REPORTED BY: [redacted]

On November 8, 1994, at 3:25 p. m. Rafael C. Goyeneche, III and Anthony Radosti met with Federal Judge Thomas G. Porteous in his chambers which are located at 500 Camp Street, New Orleans, Louisiana.

Upon arrival we advised Judge Porteous that the purpose of our meeting was to question him regarding his amendment of the Aubry N. Wallace sentence (State of Louisiana vs. Aubry Wallace, 89-2360-A, 24th Judicial District Court, Jefferson Parish, Louisiana). In particular we advised Judge Porteous that we wanted to ask him about his relationship with Louis Marcotte. Mr. Marcotte is the owner of Bail Bonds Unlimited and Mr. Wallace's

employer. The Judge stated "lets not sugar coat anything, in other words you guys think I'm dirty". We replied that we had some questions about his handling of the Aubry Wallace case and welcomed an explanation of his reasoning in this matter.

We informed the Judge that our sources had confirmed that Mr. Wallace was desirous of having his burglary conviction set aside and dismissed so that he could apply to the Louisiana Pardon Board as a first offender to receive a pardon for a narcotics conviction. We advised the Judge that Wallace could only apply for a pardon as a first offender on the narcotics case if his burglary conviction was set aside. We told the Judge that Wallace needed his two felony convictions (Burglary and Possession of in excess of 28 oz. of cocaine) removed from his record so that he could apply for a license to be a bail bondsman. The Judge admitted that he was informed of Mr. Wallace's plan by Robert Rees the attorney for Wallace. The Judge readily acknowledged that he was aware that Wallace had been working for Bail Bonds Unlimited and Louis Marcotte at the time he amended Wallace's sentence. Furthermore, the Judge stated that he suspected that Wallace's employment with Bail Bonds Unlimited was a violation of some type of state law, but he felt it was the responsibility of the parole officer to deal with that issue. The Judge stated that he was aware that Wallace was recently arrested by the Parole Office for a parole violation relative to his employment with Bail Bonds Unlimited.

The Judge freely admitted that he has known Mr. Marcotte for a number of years and considers him to be a friend. We asked the

Judge if he frequently ate lunch with Mr. Marcotte and provided him with the name of the two restaurants they frequent. He admitted that he has had several lunches with Mr. Marcotte, but he didn't know if he would term his lunches with Marcotte as "frequent". Additionally, we asked if he had traveled to Las Vegas with Mr. Marcotte and he confirmed that he had. The Judge stated that six or seven people went as a group to Vegas and Marcotte was a member of the group. The Judge when asked did Marcotte pay his way, quickly changed the subject. Porteous when asked a second time advised that Marcotte did not pay his way to Vegas.

We then questioned the Judge about the factors he considered in deciding to amend Aubry Wallace's sentence on September 22, 1994. The Judge stated that he had known Wallace before he appeared before him on the burglary charge. He was a sheriff's deputy until he got into some type of trouble. He considered Wallace to be a [redacted] but liked him and thought he was deserving of a "break". Porteous also stated that he would see Wallace around the court house and knew he was working for Marcotte. The Judge stated that he felt Wallace was entitled to be benefit of La. C. Cr. Pro. Art.: 893 (E) (which permits a judge to set aside the conviction and dismiss the prosecution) because he was told by the defense attorney that he (Porteous) did not advise Wallace at the time he tendered his plea that Article 893 was available to him. Porteous advised he did not recall the guilty plea at all nor did he check the record. The Judge stated that he recently had granted another 893 plea to another felon that had completed his sentence 20 years ago.

We informed the Judge that in our opinion his actions were improper under La. C. - Cr. Pro. Art.: 881 RE: Amendment of Sentence. We pointed out that the article limits the courts discretion to amend sentences to instances prior to the beginning of the execution of the sentence. Wallace's sentence was amended after completion of his jail term for a narcotics conviction and while he was on supervised parole. The Judge admitted that his actions were contrary to Article 881 but defended his actions by stating that the Assistant District Attorney who was present in court should have objected to the amendment of Wallace's sentence.

The Judge vehemently denied that he amended the sentence out of friendship for or at the request of Louis Marcotte.

The Judge stated he felt he had done nothing criminal, but stated that the Assistant District Attorney had the authority to appeal his ruling if it was improper. The Judge ended the meeting by telling us to "do what you think you have to do." We thanked him for his time and we left his chamber at approximately 4 p. m.

TWENTY-FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

THE STATE OF LOUISIANA NO. 89-2360

VS.

AUBRY N. WALLACE DIV. A

Proceedings taken in the above numbered and entitled cause in open court on June 26, 1990 before the Honorable G. Thomas Porteous, Judge presiding.

* * * * * * *

APPEARANCES:

For the State:

ANN LAMBERT, Assistant District Attorney

For the Defendant:

JOSEPH J. TOSH, Attorney at Law

Reported by: Sandra B. Bancock, CCR

PROCEEDINGS

MR. TOSH:

I'm Joseph Tosh and I represent Aubry Wallace. Mr. Wallace would withdraw his former plea of not guilty and enter a plea of guilty to the amended charge of simple burglary.

AUBRY N. WALLACE, 240 Garden Road, Marrero, Louisiana, after having been first duly sworn, was examined and testified as follows:

THE COURT:

Mr. Wallace, your attorney has indicated to me that he's advised of your rights:

One, to a trial by jury,

Two, to confront your accusers, and

Three, against self-incrimination

and that by entering a plea of guilty you are waiving or giving up these rights.

He's also indicated to me that you have advised him that you understand these things; is that correct?

THE DEFENDANT:

Yes.

THE COURT:

I want you to convince me also that you understand what you are doing by entering this plea of guilty. Consequently, I am going to explain the nature of the crime to which you are pleading guilty and I will also explain the consequences of your plea of guilty.

If you have any questions or if you do not understand anything I say stop me and I will answer your questions and give you any additional instructions which you may desire.

Ms. Lambert, this case is being

reduced to simple burglary; is that correct?

MR. LAMBERT:

Yes.

THE COURT:

You're 29 and you have a high school diploma. Is that correct, Mr. Wallace?

THE DEFENDANT:

Yes.

THE COURT:

Mr. Wallace, you're pleading guilty to one count of simple burglary which occurred on the eighth day of May 1989. The maximum penalty I could impose on you would be up to 12 years at hard labor. Do you understand that?

THE DEFENDANT:

Yes.

THE COURT:

Do you understand that the plea of guilty is your decision and no one can force you to so plead?

THE DEFENDANT:

Yes.

THE COURT:

To plead guilty is your voluntary act and must be free from any vice or defect which would render your ability to plead guilty inadequate. Has anyone used any force, intimidation, coercion or promise or reward against either you or any member of your family for the purpose

THE COURT:

No anything.

THE DEFENDANT:

No.

THE COURT:

Have you been advised by your attorney that if I accept your plea I intend to give you three years at hard labor suspended, two years of active probation and a $10 a month supervision fee? Do you understand that?

THE DEFENDANT:

Yes.

THE COURT:

You have the right to a trial by jury which jury may either find you guilty as charged, guilty of a lesser crime or not guilty. You have the right to hire an attorney to defend you at that trial. If you could not afford an attorney one would be appointed for you which would cost you nothing. Do you understand that by pleading guilty you are waiving or giving these rights?

THE DEFENDANT:

Yes.

THE COURT:

THE DEFENDANT:

Yes.

THE COURT:

Are you satisfied with his representation?

THE DEFENDANT:

Yes.

THE COURT:

Do you have any complaint to make?

THE DEFENDANT:

No.

THE COURT:

At any jury trial you have the right to confront your accusers to compel testimony on your behalf from your witnesses. By entering this plea of guilty you are waiving or giving up these rights. Do you understand that?

THE DEFENDANT:

Yes.

THE COURT:

If you were to go on trial in the event of a conviction, that is, if the jury would find you guilty you would have the right to appeal. Again, in the event of an appeal if you could not afford an attorney one would be appointed for you which would cost you nothing. By entering this plea of guilty you are waiving and giving up these rights. Do you understand that?

[redacted]

Yes.

THE COURT:

If you plead guilty and this Court

accepts your plea you do not have the right to assert any allegations of defect, such as:

One, an illegal arrest

Two, an illegal search an seizure

Three, an illegal confession

Four, an illegal lineup, and

Five, the fact that the State might not be able to prove such charge or that a jury would find you guilty. Do you understand that by pleading guilty you are waiving or giving up these rights?

THE DEFENDANT:

Yes.

THE COURT:

Do you understand that by pleading guilty you are telling this Court that you have in fact committed the crime to which you are pleading guilty?

THE DEFENDANT:

Yes.

THE COURT:

Mr. Tosh, there's a portion on here for you to read and sign. You did both.

MR. TOSH:

Yes, Your Honor.

[redacted]

Yes.

THE COURT:

Mr. Tosh went over the document with you.

THE DEFENDANT:

Yes.

THE COURT:

Are there any questions you have of me or is there anything that you do not understand?

THE DEFENDANT:

No.

THE COURT:

I, as trial judge, have entered into the foregoing colloquy with the defendant. I'm entirely satisfied that the defendant was aware of the nature of the crime to which he has pled guilty. That the defendant did in fact commit said crime and that there is a basis in fact to accept said plea of guilty. That the defendant understands the consequences of said plea of guilty and has made a knowing, intelligent, free and voluntary act of pleading guilty to the above mentioned crime. I therefore will accept his plea of guilty.

Again, you have a right to a delay. If you wish to waive that delay I can impose sentence today.

MR. TOSH:

We will waive any delay.

THE COURT:

Under 894.1 Mr. Wallace has absolutely

no history of any criminal activity. Two, he should respond affirmatively to probationary treatment. Three, his crime was the result of circumstances unlikely to occur. Accordingly, the Court will sentence the defendant to three years at hard labor which I will suspend and place him on two years of active probation. He will pay a monthly supervision fee in the amount of $10 per month.

MR. TOSH:

Thank you, Your Honor.

C E R T I F I C A T E

I, Sandra B. Hancock, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of the proceedings heard in open court at Gretna, Louisiana, June 26, 1990 before the Honorable G. Thomas Porteous, Judge presiding in the matter entitled, THE STATE OF LOUISIANA VERSUS AUBRY N. WALLACE, NO. 89-2360.

Sandra B. Hancock
Official Court Reporter
24th Judicial District Court
In and For the Parish of Jefferson
State of Louisiana

TWENTY-FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

****

STATE OF LOUISIANA NO. 89-2360

VS. DIVISION "A"

AUBREY WALLACE
****

PROCEEDINGS taken in the above numbered and entitled cause before the Honorable G. Thomas Porteous, Judge presiding, on September 21, 1994.

APPEARANCES

For the Plaintiff:

Michael Reynolds

For the Defendant:

Bruce Netterville

Reported by: Lisa Broussard, Official Court Reporter

WITNESS INDEX

WITNESSES: PAGE NO.:

EXHIBIT INDEX

EXHIBITS:	DESCRIPTION	PAGE RECEIVED:
	PLAINTIFF'S EXHIBITS	
	DEFENDANT'S EXHIBITS	

P R O C E E D I N G S

THE COURT:

All right. This is State of Louisiana versus Aubrey Wallace. It was 89-2360. It's a motion for amended sentence. Mr. Netterville is standing in on behalf of Mr. Reese. I've already spoken with the DA on this. Apparently, previously in my Court on 11 December 91, I terminated this defendant's probation unsatisfactorily because as stated in the petition, "Subject was sentenced on 2/26/91, on 89-0001, to five years at hard labor for possession of PCP and Cocaine." That conviction or that crime technically predates the crime for which he pled in my particular Court. Accordingly, it was an incorrect basis to terminate unsatisfactorily. Accordingly, the sentence will be amended to include removal of the unsatisfactory removal of probation and the entering of the plea under Code of Criminal Procedure 893.

All right. I've signed the order.

MR. NETTERVILLE:

Thank you, Judge.

THE COURT:

If you want further relief, then file a petition to enforce 893 and then I'll execute that also.

MR. NETTERVILLE:

Thank you.

C E R T I F I C A T E

I, Lisa Broussard, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of the proceedings heard in Open Court at Gretna, Louisiana, on September 21, 1994, before the Honorable G. Thomas Porteous, Judge presiding, in the matter entitled State of Louisiana versus Aubry N. Wallace, numbered Criminal Docket Number 89-2360.

Lisa Broussard

LISA BROUSSARD
OFFICIAL COURT REPORTER
24TH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF
JEFFERSON, STATE OF LOUISIANA

This 28 day of Nov., 1994.

TWENTY-FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

****

STATE OF LOUISIANA NO. 89-2360

VS. DIVISION "A"

AUBRY WALLACE

****

PROCEEDINGS taken in the above numbered and entitled cause before the Honorable G. Thomas Porteous, Judge presiding, on October 14, 1994.

APPEARANCES

For the Plaintiff:

Michael Reynolds

For the Defendant:

Robert Reese

Reported by: Lisa Broussard, Official Court Reporter

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PROCEEDINGS

MR. REESE:

Your Honor, Robert Reese on behalf of - -

THE COURT:

I'm going to grant that. I've already amended the sentence to provide for a 893.

MR. REESE:

Yes, sir. I might want to put something on the record.

THE COURT:

All right.

MR. REESE:

I wasn't here last time, Judge. In that matter, Mr. Wallace was placed on probation by your Court. He later received a conviction, but the charge he received the conviction on happened prior to the probation. His probation was terminated unsatisfactorily based on that - -

THE COURT:

I've changed that already.

MR. REESE:

We already terminated the probation satisfactorily. We amended the sentence for 893, and at this time I'm asking that the 893 be invoked.

THE COURT:

I'm going to invoke it. Under 893 the dismissal will be entered.

MR. REESE:

Thank you, Your Honor.

C E R T I F I C A T E

I, Lisa Broussard, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of the proceedings heard in Open Court at Gretna, Louisiana, on October 14, 1994, before the Honorable G. Thomas Porteous, Judge presiding, in the matter entitled State of Louisiana versus Aubry N. Wallace, numbered Criminal Docket Number 89-2360.

Lisa Broussard

LISA BROUSSARD
OFFICIAL COURT REPORTER
24TH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF
JEFFERSON, STATE OF LOUISIANA

This 28 day of Nov, 1994.

Historical and Statutory Notes

Source:

18 U.S.C.A. § 3568; Acts 1966, No. 310, § 1.

→ **Art. 881. Amendment of sentence**

A. Although the sentence imposed is legal in every respect, the court may amend or change the sentence, within the legal limits of its discretion, prior to the beginning of execution of the sentence.

B. After commencement of execution of sentence, in felony cases in which the defendant has been sentenced to imprisonment without hard labor and in misdemeanor cases, the sentencing judge may reduce the sentence or may amend the sentence to place the defendant on supervised probation. If a sentence is reduced or amended, a copy of the minute entry reflecting the judgment reducing or amending the sentence shall be furnished to the district attorney and the arresting law enforcement agency. *Amended by Acts 1987, No. 59, § 1.*

Official Revision Comment

(a) This article continues the rule of Art. 526 of the 1928 Code of Criminal Procedure, that a legal sentence may only be changed, either to increase or decrease it, prior to the beginning of execution of the sentence.

Fed.Rule 35 authorizes a reduction of sentence within sixty days after sentence is imposed without any reference to the beginning of execution. A questionnaire was addressed to all Louisiana District Judges as to whether they favored a rule authorizing reduction of a sentence within a sixty-day period. The Louisiana District Judge's Association, at its April 23, 1964 meeting, considered the matter and voted unanimously in favor of retaining the rule that does not permit any change in a legal sentence after the defendant has begun to serve the sentence. The reasons underlying the district judges' vote were clearly indicated in answers to the questionnaire, which also advocated "no change", and are summarized as follows:

First, Louisiana district judges make use of pre-sentence investigations when they serve a useful purpose, and the judges impose sentence after full and deliberate consideration of all relevant circumstances. Many judges reported that they never had occasion to increase or decrease the sentence imposed.

Second, the judges are strongly against any provision, such as Fed. Rule 35, which authorizes reduction of a sentence after the beginning of its execution. Such a procedure can subject the sentencing judge to continuous harassment by the defendant's relatives, friends, and attorneys, and would virtually constitute the judge a "one man pardon board" as several of the judges aptly point out.

Third, the judges apparently feel that the authority to amend the sentence prior to the beginning of its execution is a proper compromise of a difficult situation. It permits some reconsideration in exceptional cases, without subjecting the sentencing judge to a substantial period of harassment and pressures.

The above article conforms with the district judges' recommendation.

(b) The trial court's authority to amend the sentence prior to "the beginning of execution of the sentence," is limited by Art. 916, which divests the trial court of jurisdiction upon the entering of the order of appeal. Certain exceptions are recognized in Art. 916, and one of these is that the trial court retains jurisdiction to "Correct an illegal sentence, or reduce a legal sentence in accordance with Article 913B." Under Article 913B, the trial court has authority to amend the sentence to grant credit for all or a part of the time served pending the appeal, when the defendant was held without bail.

(c) Since the authority to increase a sentence prior to the beginning of execution of the sentence is a continuation of the rule of Art. 526 of the 1928 Code, it will not preclude continued recognition of the binding effect of a "plea bargain". In State v. Mockosher, 205 La. 434, 17 So.2d 575 (1944), the Louisiana Supreme Court held that where a defendant had pleaded guilty and had been sentenced in conformity with an agreement entered into with the court and district attorney, the court was powerless to reconsider the penalty and increase the sentence originally imposed. The court reasoned that the defendant had surrendered "valuable rights" in return for the security of the light sentence, and that those rights could not be taken away by a subsequent exercise of the court's general authority to increase the sentence prior to the beginning of its execution.

Historical and Statutory Notes

Source:

Former R.S. 15:526; Acts 1966, No. 310, § 1.

→ **Art. 881.1. Motion to reconsider sentence**

A. (1) Within thirty days following the imposition of sentence or within such longer period as the trial court may set at sentence, the state or the defendant may make or file a motion to reconsider sentence.

(2) The motion shall be oral at the time of sentencing or in writing thereafter and shall set forth the specific grounds on which the motion is based.

B. If a motion is made or filed under Paragraph A of this Article, the trial court may resentence the defendant despite the pendency of an appeal or the commencement of execution of the sentence.

C. The trial court may deny a motion to reconsider sentence without a contradictory hearing.

D. Failure to make or file a motion to reconsider sentence or to include a specific ground upon which a motion to reconsider sentence may be based, including a claim of excessiveness, shall preclude the state or the defendant from raising an objection to the sentence or from urging any ground not raised in the motion on appeal or review. *Added by Acts 1991, No. 38, § 1, eff. Jan. 31, 1992.*

Historical and Statutory Notes

Section 3 of Acts 1991, No. 38 (§ 1 of which enacted C.Cr.P. arts. 881.1 to 881.6 and § 2 of which amends C.Cr.P. art. 916) provides:

Section 3. The provisions of this Act shall become effective on January 1, 1992, or thirty days after the effective date of the sentencing guidelines promulgated by the Louisiana Sentencing Commission, whichever is later."

The sentencing guidelines became effective Jan. 1, 1992.

Art. 881.2. Review of sentence

A. (1) The defendant may appeal or seek review of a sentence based on any ground asserted in a motion to reconsider sentence. The defendant also may seek review of a sentence which exceeds the maximum sentence authorized by the statute under which the defendant was convicted and any applicable statutory enhancement provisions.

(2) The defendant cannot appeal or seek review of a sentence imposed in conformity with a plea agreement which was set forth in the record at the time of the plea.

B. The state may appeal or seek review of a sentence:

(1) If the sentence imposed was not in conformity with:

(a) Mandatory requirements of the statute under which the defendant was convicted, or any other applicable mandatory sentence provision; or

(b) The applicable enhancement provisions under the Habitual Offender Law, R.S. 15:529.1; and

(2) If the state objected at the time the sentence was imposed or made or filed a motion to reconsider sentence under this Article. *Added by Acts 1991, No. 38, § 1, eff. Jan. 31, 1992.*

Historical and Statutory Notes

For provision relating to the effective date of this section, see note under C.Cr.P. art. 881.1.

Art. 881.3. Record on review of sentence

In reviewing a sentence the appellate court may consider the record of the case which shall include any evidence or relevant information introduced at preliminary hearings, hearings on motions, arraignments, or sentencing proceedings, and any relevant information included in a presentence investigation report filed into the record at sentencing. In order to preserve confidentiality, in appropriate cases, the court may order that the presentence report, or any portion thereof, be held under seal. *Added by Acts 1991, No. 38, § 1, eff. Jan. 31, 1992.*

Historical and Statutory Notes

For provision relating to the effective date of this section, see note under C.Cr.P. art. 881.1.

Art. 881.4. Action by appellate court

A. If the appellate court finds that a sentence must be set aside on any ground, the court shall remand for resentence by the trial court. The appellate court may give direction to the trial court concerning the proper sentence to impose.

B. In the interest of justice, the appellate court may remand the case for resentencing before a judge other than the judge who imposed the initial sentence.

C. If necessary to an appropriate disposition of a motion to reconsider sentence, the appellate court may remand the case to the trial court with instructions to supplement the record or to hold an evidentiary hearing.

D. The appellate court shall not set aside a sentence for failure to impose a sentence in conformity with the sentencing guidelines or for excessiveness if the record supports the sentence imposed. *Added by Acts 1991, No. 38, § 31, eff. Jan. 31, 1992.*

Historical and Statutory Notes

For provision relating to the effective date of this section, see note under C.Cr.P. art. 881.1.

Art. 881.5. Correction of illegal sentence by trial court

On motion of the state or the defendant, or on its own motion, at any time, the court may correct a sentence imposed by that court which exceeds the maximum sentence authorized by law. *Added by Acts 1991, No. 38, § 1, eff. Jan. 31, 1992.*

Historical and Statutory Notes

For provision relating to the effective date of this section, see note under C.Cr.P. art. 881.1.

Art. 881.6. Effect upon sentence

No sentence shall be declared unlawful, inadequate, or excessive solely due to the failure of the court to impose a sentence in conformity with the sentencing guidelines of the commission. *Added by Acts 1991, No. 38, § 1, eff. Jan. 31, 1992.*

Historical and Statutory Notes

For provision relating to the effective date of this section, see note under C.Cr.P. art. 881.1.

Art. 882. Correction of illegal sentence; review of illegal sentence

A. An illegal sentence may be corrected at any time by the court that imposed the sentence or by an appellate court on review.

B. A sentence may be reviewed as to its legality on the application of the defendant or of the state:

(1) In an appealable case by appeal; or

(2) In an unappealable case by writs of certiorari and prohibition.

C. Nothing in this Article shall be construed to deprive any defendant of his right, in a proper case, to the writ of habeas corpus. *Amended by Acts 1984, No. 587, § 1.*

Official Revision Comment

(a) The first sentence, taken from Fed. Rule 35, states the almost self-evident authority of the court to correct an illegal sentence at any time, for an illegal sentence is, in the contemplation of the law, no sentence at all. State v. Johnson, 220 La. 64, 55 So.2d 782 (1951). The phrase "at any time" makes clear the court's authority to make a correction after the defendant has begun to serve the sentence. Such authority was squarely affirmed in United States v. Johnson, 142 F.Supp. 532 (E.D.Tex.1956), aff'd, 241 F.2d 60 (5th Cir. 1957), citing Bozza v. United States, 330 U.S. 160, 67 S.Ct. 645, 91 L.Ed. 818 (1947).

(b) The court's authority to correct an illegal sentence at any time, which includes the power to pronounce a legal sentence, applies when an order of appeal or writs have been granted. This authority of the trial court is specifically set forth in Art. 916. Retention of the trial judge's power to correct an illegal sentence after an appeal has been taken achieves a very practical result. Under the well-settled Louisiana jurisprudence, State v. Johnson, 220 La. 64, 55 So.2d 782 (1951) (citing eleven Louisiana decisions in point), the supreme court will not directly correct an illegal sentence. Instead the case is remanded to the trial judge to impose a legal sentence as a substitute for the previously imposed illegal one. Under the above article the trial judge is empowered whenever and at whatever stage of the proceedings he discovers his error, to directly correct the illegal sentence.

(c) The methods of review stated in this article are retained from Art. 527 of the 1928 Code.

Historical and Statutory Notes

Source:
Fed.Rule 35; former R.S. 15:527; Acts 1966, No. 310, § 1.

Art. 883. Concurrent and consecutive sentences

If the defendant is convicted of two or more offenses based on the same act or transaction, or constituting parts of a common scheme or plan, the terms of imprisonment shall be served concurrently unless the court expressly directs that some or all be served consecutively. Other sentences of imprisonment shall be served consecutively unless the court expressly directs that some or all of them be served concurrently. In the case of the concurrent sentence, the judge shall specify, and the court minutes shall reflect, the date from which the sentences are to run concurrently. *Amended by Acts 1977, No. 397, § 1.*

Official Revision Comment

The sentencing judge's general authority to impose either concurrent or consecutive sentences is well recognized. Often, however, the judge's intent in this regard is either not expressed or is expressed in a very confused way. Orfield, in Criminal Procedure From Arrest to Appeal 575 (1947), states that "One of the knottiest problems of criminal procedure is how to tell when sentences are concurrent and when consecutive." This important matter was not provided for in the 1928 Louisiana Code of Criminal Procedure. Under this article the judge has express authority to specify whether multiple sentences are to be served concurrently or consecutively. The authority exists when sentences for several offenses are imposed at the same time, and also when sentence for a new conviction is imposed on a defendant who has already been sentenced for a prior conviction.

When the court does not expressly direct whether the sentences are to be served concurrently or consecutively, this article provides the rule of construction. If the sentences are for offenses arising out of the same act or transaction or out of interrelated criminal conduct, it is likely that the judge intended concurrent sentences. There is substantial precedent for treating such offenses as running concurrently. (See Sec. 402 of the A.L.I. Code of Criminal Procedure.) A general presumption of concurrent sentences is found in some states. People v. Ezell, 155 Ill.App. 298 (1910); Breton, Petitioner, 93 Me. 39, 44 Atl. 125 (1899); In re Black, 162 N.C. 457, 78 S.E. 273 (1913); State v. McKellar, 85 S.C. 236, 67 S.E. 314 (1910).

If the convictions are for offenses which do not arise out of the same interrelation of criminal conduct, a sentencing judge would be much less likely to intend that the sentences be served concurrently. Therefore, this article provides that in the absence of an express stipulation to the contrary, such sentences are to be served consecutively.

Historical and Statutory Notes

Source:
Acts 1966, No. 310, § 1.

Art. 883.1. Sentences concurrent with sentences of other jurisdictions

A. The sentencing court may specify that the sentence imposed be served concurrently with a sentence imposed by a federal court or a court of any other state and that service of the concurrent terms of imprisonment in a federal correctional institution or a correctional institution of another state shall be in satisfaction of the sentence imposed in this state in the manner and to the same extent as if the defendant had been committed to the Louisiana Department of Public Safety and Corrections for the term of years served in a federal correctional institution or a correctional institution of another state. When serving a concurrent sentence in a federal correctional institution or a correctional institution of another state, the defendant shall receive credit for time served as allowed under the laws of this state.

B. Whenever sentence is imposed under the provisions of this Article, the court shall order that the defendant be remanded to the custody of the sheriff of the parish in which the conviction was had in the event that the terms of imprisonment to which the defendant is sentenced in the foreign jurisdiction terminates prior to the date on which the sentence imposed in this state is to terminate.

D. The authority vested in courts by this Article is in addition to any authority granted by other laws with respect to persons convicted of traffic violations and children decreed to be traffic violators.

E. All court-approved driver improvement courses under this Article shall include instruction on railroad and highway grade crossing safety.

F. to I. Repealed by Acts 1991, No. 485, § 2; Acts 1993, No. 225, § 2, eff. July 1, 1993. *Added by Acts 1972, No. 224, § 1. Amended by Acts 1985, No. 150, § 1; Acts 1990, No. 834, § 1; Acts 1991, No. 485, §§ 1, 2; Acts 1993, No. 225, § 2, eff. July 1, 1993.*

1 R.S. 32:1 et seq.

Art. 892.2. Notice of controlled dangerous substance conviction; licensing authority

When a person is convicted of violating any felony provision of the Uniform Controlled Dangerous Substances Law, the court imposing sentence shall determine if the defendant possesses a license to practice a trade, occupation, or profession in this state and, if so, the court shall cause notice of the conviction to be forwarded to the appropriate licensing authority. *Added by Acts 1989, No. 81, § 1.*

Art. 892.3. Transfer of foreign nationals or citizens; treaty

When a treaty is in effect between the United States and a foreign country providing for the transfer of a convicted offender who is a citizen or national of the foreign country to the foreign country or the transfer of a citizen of the United States convicted as an offender in the foreign country to the United States, the governor is authorized, subject to the terms of such treaty, to act on behalf of the state and to consent to the transfer of such convicted offenders under the provisions of Article IV, Section 5(A) of the Constitution of Louisiana. *Added by Acts 1990, No. 514, § 1, eff. July 18, 1990.*

CHAPTER 2. SUSPENDED SENTENCE AND PROBATION

Art.
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901. Revocation for commission of another offense.
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902. Drug addict; pre-sentence investigation; voluntary treatment; conditions of probation.

Preliminary Statement . . . . . .

Although suspension of sentence has been possible in Louisiana since 1914 and was incorporated into the 1928 Code of Criminal Procedure, the first comprehensive system of suspended sentence and probation was enacted by Acts 48 and 49 of the 1942. Those laws were revised in 1960, by the Parolee Rehabilitation Committee, in the light of recent developments in this important phase of penology. Act 360 of 1960, drafted and sponsored by that committee, was prepared after a full consideration of the probation section, Sec. 301, of the American Law Institute's tentative draft of a Model Penal Code, the Standard Probation and Parole Act prepared by the National Probation and Parole Association, the 1942 Louisiana statutes (former R.S. 15:530 to 538), and carefully drafted statutes of California, Florida, Illinois, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin. The 1960 Louisiana statute, which had been carefully considered by a strong panel of judges and prison administrators, served as the basis of this Chapter. Since the basic policy considerations were so recently and carefully reviewed, this Chapter generally adheres to the 1960 law. However, each provision has been carefully analyzed in an effort to improve its phraseology and organization, if possible.

Art. 893. Suspension of sentence and probation in felony cases

A. When it appears that the best interest of the public and of the defendant will be served, the court after a first or second conviction of a noncapital felony, may suspend, in whole or in part, the imposition or execution of either or both sentences, where suspension is allowed under the law, and in either or both cases place the defendant on probation under the supervision of the division of probation and parole. The court shall not suspend the sentence of a second conviction unless the court finds that such offense did not involve the use of a dangerous weapon by the defendant, the offense occurred at least five years after satisfaction of the sentence imposed for the first conviction, and the defendant was not charged with any other felony since the date of first conviction. The period of probation shall be specified and shall not be less than one year nor more than five years. The suspended sentence shall be regarded as a sentence for the purpose of granting or denying a new trial or appeal.

B. The court under the same conditions and by the same procedure as provided for above may suspend the

execution or imposition of the sentence of a multiple offender who has been convicted, in the instant offense, of a violation of the Controlled Dangerous Substances Law of Louisiana,[1] other than the production, manufacture, distribution, or dispensing, or possession with intent to produce, manufacture, distribute, or dispense, or the attempt to possess with intent to produce, manufacture, distribute, or dispense, a controlled dangerous substance, and place the defendant on probation if he intends to participate, and is accepted, in a licensed state or federal drug treatment program, or if not immediately accepted, he receives a binding commitment from the appropriate official of a licensed state or federal drug treatment program that the next available space in such program will be given to the defendant; however, if for any reason the defendant is rejected by the program, or if he leaves the program before completion or against medical advice, he shall be returned to the custody of the court which imposed the sentence and the sentencing judge shall order the sentence executed.

C. If the sentence consists of both a fine and imprisonment, the court may impose the fine and suspend the sentence or place the defendant on probation as to the imprisonment.

D. Except as otherwise provided by law, the court shall not suspend a felony sentence after the defendant has begun to serve the sentence.

E. When the imposition of sentence has been suspended by the court for the first conviction only, as authorized by this Article, and the court finds at the conclusion of the probationary period that the probation of the defendant has been satisfactory, the court may set the conviction aside and dismiss the prosecution and the dismissal of the prosecution shall have the same effect as acquittal, except that said conviction may be considered as a first offense and provide the basis for subsequent prosecution of the party as a multiple offender, and further shall be considered as a first offense for purposes of any other law or laws relating to cumulation of offenses. Dismissal under this Paragraph shall occur only once with respect to any person.

F. Nothing contained herein shall be construed as being a basis for destruction of records of the arrest and prosecution of any person convicted of a felony. *Amended by Acts 1970, No. 467, § 1; Acts 1972, No. 514, § 1; Acts 1978, No. 570, § 2; Acts 1980, No. 311, § 1; Acts 1986, No. 770, § 1; Acts 1987, No. 59, § 1; Acts 1987, No. 721, § 1; Acts 1991, No. 89, § 1; Acts 1991, No. 91, § 1; Acts 1992, No. 303, § 1.*

[1] R.S. 40:961 et seq.

Official Revision Comment

(a) Under this article and its source provision the sentencing judge is authorized to suspend either the imposition or execution of sentence when placing the defendant on probation. The 1960 authorization for suspension of the imposition of sentence followed A.L.I. Model Penal Code, § 7.01 (Tent. Draft No. 4, 1955), which permitted the sentencing judge to place a defendant on probation without immediately fixing the term to be served if the probation was violated. Accord: 18 U.S.C. § 3651. Thus, the court is enabled to consider the probation record in determining a subsequent imposition of the sentence. An alternative is afforded by the court's authority to impose a sentence and suspend its execution. Often a definite statement of the term facing the defendant on probation, if he fails to satisfy his probation, will be desirable as an added incentive for compliance.

(b) Act 360 of 1960 might have been construed as authorizing the court to suspend a felony sentence without probation. A primary function of suspended sentence is lost if it is not safeguarded by the conditions and supervision which probation entails. This article is more specific and clearly makes probation mandatory. Of course, the extent of the conditions and supervision imposed will vary with the needs of the particular case.

(c) The concluding provision is retained from the 1942 and 1960 probation laws, which also prohibited the court from suspending the sentence after the defendant has begun to serve it. In retaining this prohibition against belated probation, the 1960 drafting committee stated, "Although there is nothing 'conceptually' wrong with allowing the judge to grant a suspended sentence or probation after a person has begun to serve his sentence, the facts that, parole is available after one-third . . . of the sentence is served, and that the trial judge should not be harassed by continuous probation petitions has prompted the prohibition." Report of the Parolee Rehabilitation Committee, January 4, 1960, p. 51.

(d) The concluding sentence of the first paragraph, treating the suspended sentence as a sentence for the purpose of granting or denying a new trial or appeal, is taken from former R.S. 15:534 (last paragraph), as enacted by Act No. 360 of 1960. The provision is necessary to remove doubt as to whether a sentence imposed but suspended constitutes a sentence within the general definition of Art. 871, which defines a sentence as "the *penalty imposed* by the court . . ." (Emphasis added.) For purposes of determining the time for the filing and disposition of a motion for a new trial, the suspended sentence should be treated in the same way as any other sentence.

Historical and Statutory Notes

Source:

Former R.S. 15:530(A), as amended by Act 360 of 1960; Acts 1966, No. 310, § 1.

Art. 893.1. Motion to invoke firearm sentencing provision

A. If the district attorney intends to move for imposition of sentence under the provisions of Article 893.3, he shall file a motion within a reasonable period of time prior to commencement of trial of the felony in which the firearm was used.

B. The motion shall contain a plain, concise, and definite written statement of the essential facts consti-

B. When the imposition of sentence has been suspended by the court, as authorized by this Article, and the court finds at the conclusion of the period of suspension that the defendant has not been convicted of any other offense during the period of the suspended sentence, and that no criminal charge is pending against him, the court may set the conviction aside and dismiss the prosecution. The dismissal of the prosecution shall have the same effect as an acquittal, except that the conviction may be considered as a first offense and provide the basis for subsequent prosecution of the party as a multiple offender. Discharge and dismissal under this provision may occur only once with respect to any person during a five-year period.

C. Nothing contained herein shall be construed as being a basis for destruction of records of the arrest and prosecution of any person convicted of a misdemeanor. *Amended by Acts 1972, No. 514, § 1; Acts 1972, No. 651, § 1; Acts 1975, No. 608, § 1: Acts 1978, No. 570, § 3; Acts 1982, No. 270, § 1; Acts 1986, No. 789, § 1; Acts 1987, No. 29, § 1; Acts 1989, No. 35, § 1; Acts 1990, No. 89, § 1.*

Official Revision Comment

(a) This article provides for unsupervised suspension of sentence in most misdemeanor cases, and the only condition imposed is good behavior, which is defined to mean that the defendant must not be convicted of any other offense during the period of the suspended sentence. Accord: former R.S. 15:536, as amended by Act 360 of 1960. In State v. Gordon, 214 La. 822, 38 So.2d 794 (1949), the court interpreted the phrase "any other crime" to include conviction of a federal offense. Stressing the policy of the suspended sentence law, that is, to aid the rehabilitation of the penitent offender who abstains from further crime, the court held that the condition of the suspended sentence would be broken by any conviction whether local, federal, or foreign.

Regardless of the term of the sentence imposed, which may be for a short period of twenty or thirty days, the suspension of sentence on good behavior is for one year unless the court specifies a shorter period.

(b) The second paragraph of the above article, following the 1960 revised probation law (former R.S. 15:536), authorizes the court to place the defendant on probation when a sentence in excess of ninety days is imposed. If, however, a shorter sentence is imposed, the costs and difficulties of supervision render probation impractical. It is generally conceded that, but for the cost of supervision, probation on stated conditions is superior to simple suspension of sentence. Both A.L.I. Model Penal Code, § 7.01, Proposed Official Draft (1962) and 18 U.S.C. § 3651 make no distinction between felonies and misdemeanors, and make probation and supervision available in both instances.

(c) The period of the suspended sentence probation may be longer than the sentence imposed, but it may not exceed two years. It may be desirable to hold the defendant subject to a suspended sentence and probation for a longer period than the prison term; but it is not desirable, in misdemeanor cases, to hold the defendant subject to the probation authorities for a long period, such as may be necessary in felony cases.

(d) This article expressly authorizes the court to suspend the execution of the whole *or any part* of the sentence imposed. Although the power to suspend part of a misdemeanor sentence may appear to be implicit in the general power to suspend the execution of sentence, the Louisiana Supreme Court held that a partial suspension was not authorized by a general power to suspend. Cox v. Brown, 211 La. 235, 29 So.2d 776 (1947); State v. Johnson, 220 La. 64, 55 So.2d 782 (1951).

Flexibility is desirable, since a basic purpose of the suspended sentence is to enable a trial judge to adjust the sentence to the exigencies of the case at hand. For example, it frequently may be advisable to release a defendant for a short time because of some illness or other emergency situation. Also, it may be good policy to impose a sentence of a fine and imprisonment, but to suspend the imprisonment part of the sentence.

(e) Criminal neglect of family is a misdemeanor for which it is generally advisable to place the offender on probation with careful supervision by the Welfare Department staff to make sure that the defendant lives up to his family obligations. The substantive elements of the crime, and some incidental procedural aspects, are comprehensively treated in the much amended Arts. 74 and 75 of the Criminal Code (R.S. 14:74 and 14:75). Special probation provisions in the Criminal Procedure title of the Revised Statutes (former R.S. 15:536.1), are retained in Title 15 of the Revised Statutes. Combination and further revision did not prove feasible.

Historical and Statutory Notes

Source:

Former R.S. 15:536; Acts 1966, No. 310, § 1.

Art. 894.1. Sentencing guidelines

A. When the defendant has been convicted of a felony, the court shall consider the sentencing guidelines promulgated by the Louisiana Sentencing Commission in determining the appropriate sentence to be imposed. However, no sentence shall be declared unlawful, inadequate, or excessive solely due to the failure of the court to impose a sentence in conformity with the sentencing guidelines of the commission.

B. A court may impose a sentence, which includes incarceration or other significant sanctions, which is appropriate under the sentencing guidelines notwithstanding any limitation on probation or suspension of sentence under the provisions of Article 893.

C. The court shall state for the record the considerations taken into account, including any aggravating and mitigating circumstances which may be present, and the factual basis therefor in imposing sentence. *Added by Acts 1977, No. 635, § 1. Amended by Acts 1986, No. 704, § 1; Acts 1987, No. 500, § 1; Acts 1991, No. 22, § 1, eff. Jan. 31, 1992.*

FD-302 (Rev. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 7/8/94

GABRIEL THOMAS PORTEOUS, JR., Judge, Division A, 24th Judicial District Court, Parish of Jefferson, was interviewed at his place of business, JEFFERSON PARISH COURTHOUSE, Gretna, Louisiana 70053, 504/364-3850. PORTEOUS was advised that he was being interviewed as a result of a request for the FBI to conduct a background investigation concerning his candidacy for U.S. District Judge, Eastern District of Louisiana. PORTEOUS was advised that the scope of the questions asked during the interview was not necessarily limited to the timeframe on the SF-86 and that his response to each question should cover his entire adult life, since age 18. It was also pointed out the PORTEOUS that Question 23 on the SF-86, pertaining to "Police Record," covers activities since his 16th birthday.

PORTEOUS currently resides at 4801 Neyrey Drive, Metairie, Louisiana, which is the only property he owns at this time. PORTEOUS attended LOUISIANA STATE UNIVERSITY AT NEW ORLEANS (LSU-NO), from September, 1964, to May, 1968, while he resided with his family at 2218 Madrid Street, New Orleans, Louisiana. LSU-NO is known as the UNIVERSITY OF NEW ORLEANS (UNO) today. PORTEOUS was employed by BAKER'S SHOE STORES as listed in his application the summer after his graduation from high school and during his attendance at LSU-NO.

After graduation from LSU-NO in May, 1968, PORTEOUS continued to work for BAKER'S SHOE STORES during the summer. During PORTEOUS' attendance at LSU LAW SCHOOL in Baton Rouge, Louisiana, he continued to work part-time for BAKER'S and affiliated shoe stores in Baton Rouge. He believes BAKER'S is owned by EDISON SHOES. After PORTEOUS' first year of law school, from May, 1969, to approximately August, 1969, he resided with his parents on Madrid Street for a few months while he prepared for his wedding. PORTEOUS said that after graduation from law school in May, 1971, he was preparing for the Bar examination which he took in late June or early July, 1971. He believes he began working at the Office of the Attorney General, State of Louisiana, throughout the Summer of 1971, before becoming Special Counsel there in September, 1971.

Investigation on 7/6 & 7/8/94 at Gretna, Louisiana File # 77A-HQ- F

by SA BOBBY P. HAMIL, JR., and SA CHEYENNE D. TACKETT:rsg Date dictated 7/8/94

HP Exhibit 69(i)

FD-302a (Rev. 11-15-83)

77A-HQ-[redacted] P[redacted]

Continuation of FD-302 of GABRIEL THOMAS PORTEOUS, JR. , On 7/6 & 7/8/94 Page 2

PORTEOUS advised that from July, 1982, until August, 1984, he was employed part-time as a city attorney for the City of Harahan, simultaneously working as a Jefferson Parish District Attorney. He advised that the law firm of EDWARDS, PORTEOUS, & AMATO that he had been with beginning January, 1973, is the firm that evolved into PORTEOUS & MUSTAKAS, of which he was a partner until August, 1984. PORTEOUS said that he was employed part-time with B&L ASSOCIATES from August, 1970, to May, 1971, while at the same time working part-time for BAKER'S. He said that he was basically "on call" for B&L ASSOCIATES to conduct interviews and take statements.

PORTEOUS said that he does not really have a supervisor currently but listed HUGH COLLINS on his application as COLLINS is the judicial administrator for the State of Louisiana.

PORTEOUS said that he has no personal or business credit issues, including but not limited to repossessions, delinquent student loans, debts placed for collection, or bankruptcy. He advised that he is current on all Federal, State, and local tax obligations, including but not limited to income taxes, Medicare taxes, Social Security taxes, and unemployment taxes. PORTEOUS said that the only back payment of taxes he has had to make was either in 1974, 1975, or 1976 when he was with the firm EDWARDS, PORTEOUS & LEE. He advised that upon an Internal Revenue Service (IRS) audit, the firm was advised that advances the firm paid for filing fees could not be considered expenses, as the firm had indicated on their tax returns. The firm paid the taxes on the difference of taxable income excluding the filing fees as expenses.

PORTEOUS stated that other than the civil suits listed on the supplement to his SF-86, he has not been involved in any civil suits as a plaintiff or defendant, to include divorces. PORTEOUS said that he has had no involvement in criminal matters as a suspect or subject or any criminal charge, arrest, or conviction.

PORTEOUS said that he had not been denied employment or been dismissed from employment, to include the Federal sector. PORTEOUS advised that he has had no contact with official representatives of foreign countries.

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Continuation of FD-302 of GABRIEL THOMAS PORTEOUS, JR. , On 7/6 & 7/8/94 Page 3

PORTEOUS said he is not concealing any activity or conduct that could be used to influence, pressure, coerce, or compromise him in any way or that would impact negatively on the candidate's character, reputation, judgement, or discretion.

PORTEOUS stated that he has had no professional complaints or any non-judicial disciplinary action against him, to include Bar Association grievances, Better Business Bureau complaints, student or military disciplinary proceedings, Equal Employment Opportunity complaints, and Office of Professional Responsibility inquiries. PORTEOUS said that in his official capacity, he, along with all judges in the 24th Judicial District Court, was sued by SHURMAINE DE GRANGE and IDA WILLIAMS for alleged discrimination. He said that both petitioners were former employees of the late Judge LIONEL COLLINS. The suit is referred to in PORTEOUS' supplemental SF-86.

PORTEOUS advised that he is not involved in any business or investment circumstances that could or have involved conflicts of interest allegations.

PORTEOUS said that he has had no psychological counseling with psychiatrists, psychologists, or other qualified counselors, including marital counselors.

PORTEOUS said that he has not abused alcohol or prescription drugs or used illegal drugs, to include marijuana, during his entire adult life. He has had no participation in drug or alcohol counseling/rehabilitation programs since age 18.

PORTEOUS advised that he has had no involvement in any organization which advocates the use of force to overthrow the U.S. Government or any involvement in the commission of sabotage, espionage, or assistance of others in any of these acts. PORTEOUS knows of no current or past circumstances that could have a bearing on his suitability for Federal employment or access to classified information.

PORTEOUS advised that he has no current membership in any organization or social/private club which restrict membership on the basis of sex, race, color, religion, or national origin. PORTEOUS currently is a member of the following: American Bar Association, Jefferson Bar Association, American Judges

Associations, American Judicature Society, Louisiana District Attorney's Association, 4th and 5th Circuit Judges Association, Chateau Golf and Country Club, and St. Clement of Rome Men's Club. PORTEOUS has held the office of President of the 4th and 5th Circuit Judges Association within the last five years but does not currently hold that position. PORTEOUS advised that St. Clement is the church which he attends. He said that within the church there is a women's and men's club which have different functions in the church.

PORTEOUS advised that sometime between 1979 and 1982, he was a member of the Mardi Gras krewe of CAESAR for two years. The Mardi Gras krewe is an organization which sponsors a parade and other festivities during Mardi Gras. He advised that this was an all-male krewe at the time, but he is not sure what its membership consists of currently. PORTEOUS did not hold an office in this organization.

PORTEOUS advised that he has not written any articles for publication or made any major speeches. He said that he gives a presentation annually to the Jefferson Bar Association on topics such as conflicts of interest and medical malpractice. He has given presentations to the Louisiana Bar Association and the Louisiana Judicial College as well. These presentations consist of an outline, a short synopsis, and case examples for the continuing legal education of these organizations' members.

PORTEOUS said that he has been taking out student loans for his son through a "Parent-Plus" Program at FIRST NATIONAL BANK OF COMMERCE (FNBC), New Orleans, each semester. Repayment of these loans had been deferred until his son's graduation until recently. PORTEOUS advised that on March 7, 1994, he received his first notice that payment on the loan was due. By this time, it was overdue. In April, 1994, he received forms to fill out for deferment of payment until his son's graduation. He filled the forms out, and the school signed them on April 14, 1994. On May 3, 1994, PORTEOUS received a letter of ineligibility for deferment since the parent is paying back the loan. On May 25, 1994, he sent the lending institution a request for forbearance on the debt because of the confusion over eligibility for deferment. PORTEOUS then paid $96.83 to FNBC which covered accrued interest and, on June 28, 1994, commenced making payments as scheduled. PORTEOUS said this loan is now current.

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Continuation of FD-302 of GABRIEL THOMAS PORTEOUS, JR. , On 7/6 & 7/8/94 Page 5

PORTEOUS advised that he has seen a plastic surgeon for surgery on his ear whose name is Dr. GUSTAVE COLON. He said his internist is Dr. ROBERT SONGY.

PORTEOUS provided the supplement to his SF-86 with Attachments 1 & 2 to the interviewing Agents. PORTEOUS signed an FD-465, Medical Release Form, at this time. Also provided to the Agents was a copy of certification from Chief Disciplinary Counsel, Louisiana State Bar Association, stating that there is no pending or past record of any complaint, grievance, disciplinary action, or disciplinary proceeding against PORTEOUS.

FD-302 (Rev. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 8/18/94

Judge THOMAS PORTEOUS, State Court Judge for the 24th District of Louisiana, located in Gretna, Louisiana (LA), telephonically contacted this interviewing Agent in the New Orleans Office of the Federal Bureau of Investigation (FBI). PORTEOUS advised that he had telephoned his office in Gretna, LA, from Baton Rouge, LA, where he was teaching a class. PORTEOUS had called in to request any messages, and was advised that his Civil Court Clerk, JOLENE ACY had been interviewed earlier that day by FBI Agents of New Orleans office. As a result, she was noticeably unnerved. PORTEOUS had been advised by ACY of the nature of the interview, and stated that he seemed to recall being involved in bond reduction matters involving former criminal defendants, TRACY IRELAND and KEITH KLINE. He further stated that he seemed to recall that KLINE's bond was originally set at a very high sum of money, but upon request by the arresting officer, name unrecalled, he (PORTEOUS) agreed to reduce the bond considerably. PORTEOUS also absolutely denied that any money was received by him as a fee for agreeing to reduce the bond in the KLINE matter.

With regards to the TRACY IRELAND matter, PORTEOUS stated he recalled agreeing to reduce her bond after obtaining information about the complainant, which convinced him that the charges against her did not merit such a high bond being set.

Investigation on 8/17/94 at New Orleans, Louisiana (Telephonically) File # 77A-HQ- F

by SA BOBBY P. HAMIL, JR./glm Date dictated 8/18/94

HP Exhibit 69(j)

FD-302 (Rev. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 8/18/94

Judge THOMAS PORTEOUS, Louisiana State Court Judge for the 24th Judicial District, was interviewed in his office located in Gretna, Louisiana (LA), regarding information received from confidential source, NO T-6, on August 8, 1994.

PORTEOUS stated that he was somewhat aware of the nature of the inquiry due to his Criminal Court Clerk, JOLENE ACY, having been interviewed by this interviewing Agent on the previous day. ACY had related to Judge PORTEOUS a summation of that interview. PORTEOUS was initially asked if he recalled having been involved in a bond reduction matter for a criminal defendant named KEITH KLINE, who was arrested by the Jefferson Parish Sheriff's Office on a cocaine charge in March, 1987. Judge PORTEOUS could not specifically recall a bond reduction matter involving this named individual, but after being provided with some of the information obtained from NO T-6, PORTEOUS seemed to recall that this individual, who already had an extensive criminal history involving narcotics violations, had a very high bond initially set. Upon request from the arresting officer or possibly Deputy Chief RICHARD RODRIGUE, who is in charge of Criminal Detectives for the Jefferson Parish Sheriff's Department (JPSD), he reluctantly agreed to reduce the bond. PORTEOUS stated that if the incident that he is recalling is in fact an incident that involved the named subject, KEITH KLINE, the agreement to reduce the bond was based on reporting from a JPSD officer that E E PORTEOUS further stated that if this was the incident he is attempting to recall, then Assistant District Attorney PAT MC GINNITY, (who is currently in private practice as a criminal defense attorney, with office located on Girod Street, New Orleans, LA, telephone P-1 would have been involved in the bond reduction discussion. PORTEOUS stated that it is routine for the prosecuting attorney along with the arresting officer to be involved in a discussion regarding any bond reductions. PORTEOUS could not recall any involvement of a girlfriend of KEITH KLINE in monetary transactions regarding the bond reduction. Furthermore, PORTEOUS categorically denied that

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by SA BOBBY P. HAMIL, JR./glm Date dictated 8/18/94

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Continuation of FD-302 of JUDGE THOMAS PORTEOUS , On 8/18/94 , Page 2

he was paid a sum of $10,000, or for that matter, any sum in exchange for an agreement to reduce the bond for KEITH KLINE.

With regards to an allegation that PORTEOUS had received $1,500 to reduce a bond in a matter involving a TRACY IRELAND, who had been arrested for theft, PORTEOUS, already having been aware of this allegation from previous discussion with JOLENE ACY (as referenced above), had the criminal file available for review. PORTEOUS pointed out that IRELAND's bond had originally been set at $300,000, based on a mere two counts of theft. The bond was initially set by Judge JOHN MOLAISON. Upon review of the matter, PORTEOUS agreed to reduce the bond to a $50,000 property bond. He recalls ADAM BARNETT being the bondsman in this matter, a trusted bondsman who he had known for a long time. PORTEOUS stated that he felt, based upon the Jefferson Parish jails being extremely overcrowded at that time (last year), the fact that the details of the arrest did not appear to warrant such a high bond, along with limited criminal history of the defendant, this situation warranted a reduction in bond. PORTEOUS pointed out that the bond was reduced to a $50,000 property bond. Although it was later shown that the surety was insufficient for the amount of the bond, the defendant appeared in court for every hearing, and was ultimately given credit for time served in jail, and placed on probation. He recalled the New Orleans Times Picayune newspaper as making an issue of this technical error in allowing a property bond to be set when there was insufficient surety. PORTEOUS stated that although there was a technical error here, it proved to be a harmless error, in light of the fact that the defendant never failed to appear for any of her court hearings. However, PORTEOUS again categorically denied that he had been given $1,500 or any amount of money to reduce the bond for TRACY IRELAND.

Judge PORTEOUS also denied that he had ever owned a yacht either individually or jointly with others, and furthermore, denied that he had ever owned any type of boat. He also denied that he had ever been present when cocaine, marijuana, or any other illegal narcotic was being utilized. He also denied that he had ever used any illegal narcotic personally.

Lastly, Judge PORTEOUS denied that he had ever signed any bail bonds "in blank;" and stated that he was unaware of anything in his background that might be the basis of attempted

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Continuation of FD-302 of JUDGE THOMAS PORTEOUS, On 8/18/94, Page 3

influence, pressure, coercion or compromise and/or would impact negatively on his character, reputation, judgement or discretion.

CLOSED, MULTI

U. S. District Court
Eastern District of Louisiana (New Orleans)
CRIMINAL DOCKET FOR CASE #: 2:04-cr-00061-GPK All Defendants

Case title: USA v. Marcotte, et al

Date Filed: 03/03/2004
Date Terminated: 08/28/2006

Assigned to: Judge George P Kazen

Defendant (1)

Louis M Marcotte, III
TERMINATED: 08/28/2006

represented by **Richard W. Westling**
Ober, Kaler, Grimes & Shriver
1401 H Street, N.W.
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202-326-5012
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Martin E. Regan, Jr.
Martin E. Regan & Associates, PLC
2125 St. Charles Ave.
New Orleans, LA 70130
504-522-7260
Email: mregan@reganlaw.net
ATTORNEY TO BE NOTICED
Designation: Retained

Pending Counts	**Disposition**
18:1962(d) CONSPIRACY TO OPERATE AN ENTERPRISE THROUGH A PATTERN OF RACKETEERING ACTIVITY INCLUDING BRIBERY (1)	sentenced 8/28/06

Highest Offense Level (Opening)

Felony

HP Exhibit 70

Terminated Counts **Disposition**

None

Highest Offense Level (Terminated)

None

Complaints **Disposition**

None

Assigned to: Judge George P Kazen

Defendant (2)

Lori M Marcotte represented by **John Wilson Reed**
TERMINATED: 08/28/2006
Glass & Reed
530 Natchez St.
New Orleans, LA 70130
504-581-9083
Email: jwreed@bellsouth.net
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Pending Counts **Disposition**

18:371 CONSPIRACY TO COMMIT MAIL FRAUD
(2) sentenced 8/28/06

Highest Offense Level (Opening)

Felony

Terminated Counts **Disposition**

None

Highest Offense Level (Terminated)

None

Complaints **Disposition**

None

Plaintiff

United States of America represented by **Michael William Magner**

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Date Filed	#	Docket Text
03/03/2004	1	INFORMATION by USA against Louis M Marcotte (1) count(s) 1, Lori M Marcotte (2) count(s) 2 (jd) (Entered: 03/17/2004)
03/03/2004	2	MOTION filed by plaintiff USA and ORDER to SEAL the bill of information, factual bases, and plea agreements as to defendants Louis M Marcotte III, Lori M Marcotte by Judge Helen G. Berrigan (originally docketed 3/16/04) (jd) (Entered: 03/17/2004)
03/04/2004	3	LETTER from Chief Judge Berrigan USDC to Chief Judge Carolyn King of the USCA dated 3/3/04 advising Judge King that all judges of the EDLA who have a criminal docket have recused themselves from this matter (jd) (Entered: 03/17/2004)
03/04/2004	5	ORDER that Magistrate Judge C. Michael Hill of the Western District of La. is assigned to conduct proceedings and perform all duties permitted pursuant to USC 636 as may be required. This assignment shall be for the duration of the case. by Judge Helen G. Berrigan (originally docketed 3/16/04) (jd) (Entered: 03/17/2004)
03/05/2004	4	ORDER designating and assigning this matter to Judge George P. Kazen, District Judge for the Southern District of Texas, and to Magistrate Judge C. Michael Hill of the Western District of Louisiana, to conduct all proceedings in this matter by Chief Judge Carolyn King, USCA Date Signed: 3/4/04 (originally docketed 3/16/04) (jd) (Entered: 03/17/2004)
03/11/2004	6	ORDER that Magistrate Judge C. Michael Hill recuses himself in this matter. by Magistrate Judge C. Michael Hill Date Signed: 3/10/04 (originally docketed 3/16/04) (jd) (Entered: 03/17/2004)
03/15/2004	7	ORDER that Magistrate Judge Nancy K. Johnson of the Southern District of Texas is assigned to conduct proceedings and perform all duties permitted

		pursuant to USC 636 as may be required in this case. This assignment shall be for the duration of the case. by Judge Helen G. Berrigan (originally docketed 3/16/04) (jd) (Entered: 03/17/2004)
03/17/2004	8	ORDER that this case be UNSEALED by Judge George P. Kazen Date Signed: 3/16/04 (jd) (Entered: 03/17/2004)
03/17/2004	9	NOTICE OF LIS PENDENS filed by plaintiff USA with intent to seek criminal forfeiture of listed property recorded in the name of Sisters Marcotte, L.L.C. as to defendant Louis M Marcotte III (jd) (Entered: 03/17/2004)
03/17/2004	10	MINUTE ENTRY (3/17/03) initial appearance of Louis M Marcotte III held; Attorneys Richard W. Westling & Martin E. Regan Jr. present; dft informed court that counsel would be retained; personal surety Bond set $50,000 ; dft released on bond; arraignment held. by Magistrate Judge Johnson (jd) (Entered: 03/17/2004)
03/17/2004	11	MINUTE ENTRY (3/17/04) dft Louis M Marcotte III arraigned; not guilty plea entered; Attorneys Richard Westling & Martin Regan Jr present; dft released on bond; waiver of indictment executed; re-arraignment set for 10:00 3/18/04 before Judge George Kazen. by Magistrate Judge Johnson (jd) (Entered: 03/17/2004)
03/17/2004	12	MINUTE ENTRY (3/17/04) initial appearance of Lori M Marcotte held; Attorney John Wilson Reed present; personal surety Bond set for $10,000 ; dft released on bond; arraignment held. by Magistrate Judge Johnson (jd) (Entered: 03/17/2004)
03/17/2004	13	MINUTE ENTRY (3/17/04) dft Lori M Marcotte arraigned; not guilty plea entered; Attorney John Reed present; dft released on bond ; waiver of indictment executed; re-arraignment set for 10:00 3/18/04 before Judge George Kazen. by Magistrate Judge Johnson (jd) (Entered: 03/17/2004)
03/17/2004	15	(filed 3/18/04) WAIVER of Indictment by defendant Louis M Marcotte III (lg) (Entered: 03/18/2004)
03/17/2004	19	(filed 3/18/04) WAIVER of Indictment by defendant Lori M Marcotte (lg) (Entered: 03/18/2004)
03/18/2004	14	MINUTE ENTRY (3/17/04) Ordered that the Section for this case is hereby designated GPK by Judge George P. Kazen (lg) (Entered: 03/18/2004)
03/18/2004	16	FACTUAL BASIS as to defendant Louis M Marcotte III (lg) (Entered: 03/18/2004)
03/18/2004	17	PLEA Agreement as to Louis M Marcotte III (lg) (Entered: 03/18/2004)
03/18/2004	18	Addendum to PLEA Agreement as to Louis M Marcotte III (lg) (Entered: 03/18/2004)
03/18/2004	20	FACTUAL BASIS as to defendant Lori M Marcotte (lg) (Entered: 03/18/2004)
03/18/2004	21	PLEA Agreement as to Lori M Marcotte (lg) (Entered: 03/18/2004)
03/18/2004	22	Addendum to PLEA Agreement as to Lori M Marcotte (lg) (Entered:

		03/18/2004)
03/18/2004	23	SMOOTH Minutes as to defendant Louis M Marcotte III; Reported/Recorded by Karen Ibos; re-arraignment held; dft enters plea of guilty to count 1 of the bill of information; plea bargain letter filed; factual basis filed; plea accepted; PSI ordered; sentencing to be set a later date; dft released. by Judge George P. Kazen (jd) (Entered: 03/19/2004)
03/18/2004	24	SMOOTH Minutes as to defendant Lori M Marcotte; Reported/Recorded by Karen Ibos; re-arraignment held; dft enters plea of guilty as to count 2 of the bill of information; plea bargain letter filed; factual basis filed; plea accepted; PSI ordered; sentencing to be set at a later date; dft released. by Judge George P. Kazen (jd) (Entered: 03/19/2004)
09/08/2004	25	Consent to Modify Conditions of Release as to defendant Louis M Marcotte III & ORDER adding the condition that the defendant refrain from all use of alcohol and participate in substance abuse counseling as directed by Pretrial Services. by Judge George P. Kazen Date Signed: 9/2/04 (jd) (Entered: 09/09/2004)
11/28/2005	26	MOTION to Permission to Leave the Jurisdiction by Lori M Marcotte and ORDER granting same. Signed by Judge George Kazen on 11/29/05 (jtd,) (Entered: 11/29/2005)
11/28/2005	27	TEXT ORDER granting 26 Motion to Travel as to Lori M Marcotte (2). Defendant is permitted to travel to Italy from 12/12/05 through 12/22/05 provided that in advance of travel there is a new personal surety bond in the amount of $50,000 signed by Lisa Marcotte. Further ORDER that Pre-trial Services release defendant's passport to her for the purposes of this trip and for defendant to return passport immediately upon her return. Defendant to provide Pre-trial Services with an itinerary suffciently detailed for their purposes. Signed by Judge George P Kazen on 11/29/05. (jtd,) (Entered: 11/29/2005)
12/06/2005	28	Minute Entry for proceedings held before Judge Alma L. Chasez :Hearing to perfect bond as to Lori M Marcotte held on 12/6/2005 ; bond papers were executed and defendant was released (Court Reporter: Magistrate Clerical Unit) (jtd,) (Entered: 12/14/2005)
12/06/2005	29	Personal Surety Bond Set & Executed as to Lori M Marcotte in amount of $ $50,000.00. Defendant released. (jtd,) (Entered: 12/14/2005)
08/02/2006	32	NOTICE OF HEARING as to Louis M Marcotte, III, Lori M Marcotte. Sentencing set for 8/28/2006 02:00 PM before Judge George P Kazen. (dno,) (Entered: 08/02/2006)
08/24/2006	33	MEMORANDUM IN AID OF SENTENCING by Louis M Marcotte, III (Attachments: # 1 Exhibit A - Information Regarding Post-Plea Activities # 2 Exhibit B - Reference Letters)(jtd,) (Entered: 08/24/2006)
08/28/2006	39	Minute Entry for proceedings held before Judge George P Kazen :Sentencing held on 8/28/2006 for Louis M Marcotte, III (1), Count(s) 1 and Lori M Marcotte (2), Count(s) 2. Written judgments shall be entered. Both defendants released under their present bonds. (Court Reporter Vic Digiorgio.) (jtd,)

		(Entered: 09/01/2006)
08/28/2006	45	JUDGMENT as to Louis M Marcotte, III (1), Count(s) 1, sentenced 8/28/06 ; defendant to be imprisoned for 38 months; upon release, defendant placed on supervised release for 3 years; defendant fined $15,000; special assessment of $100; defendant to surrender by 12:00 noon on 10/27/06. Signed by Judge George P Kazen on 9/6/06. (jtd,) (Entered: 09/08/2006)
08/28/2006	46	JUDGMENT as to Lori M Marcotte (2), Count(s) 2, sentenced 8/28/06; defendant placed on probation for 3 years; defendant fined $15,000; special assessment of $100 . Signed by Judge George P Kazen on 9/1/06. (jtd,) (Entered: 09/08/2006)
08/28/2006	47	MOTION for Issuance of a Preliminary Order of Forfeiture of Property by United States of America as to Louis M Marcotte, III. (jtd,) (Entered: 09/08/2006)
08/29/2006	44	ORDER TO SURRENDER as to Louis M Marcotte, III on 10/27/06 by 12:00 noon. Signed by Judge George P Kazen on 8/28/06. (jtd,) (Entered: 09/01/2006)
09/08/2006	48	ORDER granting 47 Motion for Forfeiture of Property as to Louis M Marcotte III (1). Signed by Judge George P Kazen on 9/6/06. (USM-3cc) (jtd,) (Entered: 09/08/2006)
11/22/2006	49	EXPARTE/CONSENT MOTION to Alter Judgment re 45 Judgment, by Louis M Marcotte, III. (Attachments: # 1 Proposed Order)(Westling, Richard) (Entered: 11/22/2006)
11/28/2006	50	ORDER granting 49 Motion to Alter Judgment as to Louis M Marcotte III (1). The portion of the Judgment and Conviction entered on 8/28/06 which recommended that 'defendant be designated to a facility where he may participate in a substance abuse program' is clarified and modified to reflect the recommendation that defendant be designated to a facility where he can be enrolled in the Bureau of Prisons 500 hour Residential Drug Abuse Program (RDAP). Signed by Judge George P Kazen on 11/28/06. (jtd) Copies sent to PTS, USP, USM & BOP. Modified on 11/28/2006 (jrc). (Entered: 11/28/2006)
07/23/2007	51	EXPARTE/CONSENT MOTION for Forfeiture of Property by United States of America as to Louis M Marcotte, III. (Attachments: # 1 Affidavit # 2 Proposed Order)(Nguyen, Loan Mimi) (Entered: 07/23/2007)
07/24/2007	52	Correction of Docket Entry by Clerk re 51 MOTION for Forfeiture of Property filed by United States of America. Filing attorney did not include a certificate of service with the motion. All filings must contain this certificate. No further action is necessary. (jtd) (Entered: 07/24/2007)
07/26/2007	53	FINAL ORDER OF FORFEITURE as to Louis M Marcotte, III. Currency as described in document is to be forfeited to the USA and shall be disposed of in accordance with law. Signed by Judge George P Kazen on 7/25/07. (1cc: USM) (jtd) (Entered: 07/27/2007)

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FELONY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

BILL OF INFORMATION FOR CONSPIRACY TO OPERATE AN ENTERPRISE THROUGH A PATTERN OF RACKETEERING ACTIVITY AND CONSPIRACY TO COMMIT MAIL FRAUD

UNITED STATES OF AMERICA	*	CRIMINAL DOCKET NO.	04-061
v.	*	SECTION:	SECT V MAG. 2
LOUIS M. MARCOTTE, III LORI M. MARCOTTE	*	VIOLATIONS:	18 U.S.C. § 1962 18 U.S.C. § 1963 18 U.S.C. § 1341 18 U.S.C. § 371

* * *

The United States Attorney charges that:

COUNT 1 – CONSPIRACY TO OPERATE AN ENTERPRISE THROUGH A PATTERN OF RACKETEERING ACTIVITY

A. At All Times Material Herein:

1. Bail Bonds Unlimited, Inc. (hereinafter "BBU") was a bail bonds company licensed and regulated by the Louisiana Department of Insurance (hereinafter "DOI") and engaged in the business of insurance, whose activities affected interstate commerce. Beginning in or about 1991 and continuing until the date of this bill of information, BBU provided commercial surety bail bonds for individuals who had been arrested for crimes in Jefferson Parish, Louisiana and elsewhere. BBU

was the largest bail bonding company in Jefferson Parish, Louisiana, with over ninety percent of the bail bond market.

2. The defendant, LOUIS M. MARCOTTE, III, was a bail bondsman licensed under the laws of the State of Louisiana and was the president of BBU.

3. Pursuant to Louisiana law, a bail bond agent is licensed and regulated by the DOI to market and sell bail bonds.

4. Under Louisiana law, bail bonds are a device to insure the appearance of criminal defendants in court.

5. Louisiana law, specifically Louisiana Revised Statutes, Title 14, Article 118, defines the felony offense of public bribery as the acceptance or offering to accept, directly or indirectly, anything of apparent present or prospective value by any person elected to public office or any public officer with the intent to influence the conduct of that person in relation to his or her position, employment, or duty. Louisiana law also defines the felony offense of public bribery as the giving or offering to give, directly or indirectly, anything of apparent present or prospective value to any person elected to public office or any public officer with the intent to influence the conduct of that person in relation to his or her position, employment, or duty.

6. Amwest Surety Insurance Company (hereinafter "Amwest") was an insurance company licensed and domiciled in the State of Nebraska which underwrote bail bonds insurance policies, among other things, and engaged in the business of insurance and whose activities affected interstate commerce. Amwest entered into a general agency contract with BBU and the defendant, LOUIS M. MARCOTTE, III, on or about November 24, 1992. Pursuant to that agency contract, BBU and LOUIS M. MARCOTTE, III agreed, among other things, to indemnify and hold Amwest harmless from any loss it might incur as a result of any bail bonds written by BBU, its agents and/or LOUIS M. MARCOTTE, III. To collateralize this portion of the agency contract, BBU and LOUIS M. MARCOTTE, III agreed to create a Build-up Fund (hereinafter "BUF") by depositing approximately one-half percent (.5%) of the face value of each bond written by BBU, its agents

and/or LOUIS M. MARCOTTE, III. Amwest was placed in liquidation by the State of Nebraska on or about June 7, 2001. Amwest's successor in interest, Far West Insurance Company, was placed in liquidation by the State of Nebraska on or about November 9, 2001.

B. The Conspirators

1. Judge Ronald D. Bodenheimer (hereinafter "Bodenheimer") was a public officer, namely an elected district judge of the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana (hereinafter "24th JDC").

2. Lieutenant Guy Maynard Crosby (hereinafter "Crosby") was a public officer, namely a Lieutenant with the Jefferson Parish Sheriff's Office (hereinafter "JPSO") and was in charge of the Warrants and Attachments Section of the JPSO with the responsibility of locating and apprehending fugitives.

3. Bail Bondsman #1 was a Gretna, Louisiana bail bondsman and the Chief Financial Officer of BBU.

4. Bail Bondsman #2 was a Gretna, Louisiana bail bondsman and an employee of BBU.

5. Judge A was a public officer, namely an elected district judge of the 24th JDC.

6. Deputy #1 was a public officer, namely a JPSO Deputy and jailer.

7. Deputy #2 was a public officer, namely a JPSO Deputy and jailer.

8. Deputy #3 was a public officer, namely a JPSO Deputy and jailer.

C. The Racketeering Enterprise

LOUIS M. MARCOTTE, III, BBU, and others known to the United States Attorney comprised an enterprise as defined by Title 18, United States Code, Section 1961(4), that is, a group of individuals and entities associated in fact, which was engaged in, and the activities of which affected, interstate commerce. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

D. The Racketeering Conspiracy

1. Beginning at a date unknown but prior to 1991, and continuing through the date of this bill of information, in the Eastern District of Louisiana and elsewhere, LOUIS M. MARCOTTE, III, defendant herein, being a person employed by and associated with the enterprise, which enterprise engaged in, and the activities of which affected, interstate commerce, did conspire together and with other persons known and unknown to the United States Attorney to violate Title 18, United States Code, Section 1962(c), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity consisting of multiple acts involving bribery in violation of Louisiana Revised Statutes, Title 14, Article 118 (Public Bribery) and indictable under Title 18, United States Code, Sections 1341, 1346 (Mail Fraud).

2. It was part of the conspiracy that the defendant and his co-conspirators agreed that a conspirator would commit at least two Acts of Racketeering in the conduct of the affairs of the enterprise.

E. Purpose, Method, and Means of the Conspiracy

The form and substance of the conspiracy was as follows:

1. It was a part of the conspiracy that the defendant, LOUIS M. MARCOTTE, III, and others known to the United States Attorney, engaged in a scheme to maximize BBU's and MARCOTTE's own profits from writing bail bonds in Jefferson Parish and elsewhere through the corruption of and attempts to corruptly influence certain sheriff's deputies and judges and the defrauding Amwest, among other things.

2. It was a further part of the conspiracy that the defendant, LOUIS M. MARCOTTE, III, and others known to the United States Attorney, used the United States mails and other private interstate carriers to process BBU bonds which had been corruptly obtained, to disguise cash payments as campaign contributions, and to defraud Amwest.

3. It was a further part of the conspiracy that, in return for things of value, certain judges would make themselves available to BBU; quickly respond to the requests of BBU; and set, reduce, increase, and split bonds to maximize BBU's profits, minimize BBU's liability, and hinder BBU's competition.

4. It was a further part of the conspiracy that, to allow BBU to maximize its profits, the conspirator judges would engage in the practice of "bond splitting." Bond splitting would commonly occur when a defendant could not afford to pay the bond that had originally been set. When this happened, BBU would ask one of the conspirator judges to "split" the total bond into a commercial portion and a non-commercial portion. At BBU's request, the conspirator judge would set the commercial portion of the bond at an amount the defendant could afford and would set the balance in some other manner. BBU would then post the commercial portion of the bond and collect a percentage of that bond as commission. This practice allowed BBU to maximize its profit and minimize its liability.

5. It was a further part of the conspiracy that, in return for things of value, certain JPSO Deputies gave BBU preferential treatment at the Jefferson Parish jail to maximize BBU's profits and hinder its competition.

6. It was a further part of the conspiracy that the defendant, LOUIS M. MARCOTTE, III, defrauded Amwest by using the mails and private interstate carriers to fraudulently obtain funds from the BUF account, which was to be used to reimburse Amwest for any bond forfeitures it paid on behalf of BBU relative to criminal defendants who failed to appear in court.

7. It was a further part of the conspiracy that the defendant, LOUIS M. MARCOTTE, III, and others known and unknown to the United States Attorney, directly and indirectly, concealed and hid the purposes of and acts done in furtherance of the racketeering conspiracy.

F. Overt Acts

1. In furtherance of the said RICO conspiracy, and to accomplish the objects thereof, the defendant, LOUIS M. MARCOTTE, III, and others known and unknown to the United States Attorney, committed and caused others to commit the following Overt Acts, among others, in the Eastern District of Louisiana, and elsewhere:

2. Corruption of Judge Ronald D. Bodenheimer

a. Beginning at a date unknown and continuing until in or about June 2002, LOUIS M. MARCOTTE, III provided Bodenheimer with gifts, meals, and other things of value. In return, Bodenheimer was available to BBU; quickly responded to the requests of BBU; and set, reduced, increased, and split bonds to maximize BBU's profits, minimize BBU's liability, and hinder BBU's competition.

b. In or about July 1999, BBU paid for a hotel room and show tickets for Bodenheimer and his wife at a casino in Biloxi, Mississippi.

c. In or about March 2000, LOUIS M. MARCOTTE, III hired Bodenheimer's daughter to work at BBU. In the Fall of 2001, at Bodenheimer's request, BBU began to pay for Bodenheimer's daughter's health insurance.

d. In or about April 2000, LOUIS M. MARCOTTE, III hired Bodenheimer's stepson to work at BBU.

e. In or about June 2000, at a conference in Destin, Florida, a BBU employee chartered a boat trip for Bodenheimer, several other judges, and their families. During the same conference, LOUIS M. MARCOTTE, III hosted a party for Bodenheimer and several other judges.

f. In or about 2000 and 2001, a relative of Bail Bondsman #1 provided free labor for repairs and renovations of Bodenheimer's home.

g. In October 2000, at BBU's request, Bodenheimer set a $25,000.00 bond for a defendant who had been arrested as a fugitive.

h. In October 2000, at BBU's request, Bodenheimer split two bonds on a defendant, reducing one from a $100,000.00 commercial bond into a $10,000.00 commercial bond and a $90,000.00 personal surety bond. Bodenheimer reduced the other from a $200,000.00 commercial bond into a $20,000.00 commercial bond and a $180,000.00 personal surety bond.

i. On or about November 6, 2000, BBU began to pay for health insurance for Bodenheimer's son.

j. On or about April 6, 2001, LOUIS M. MARCOTTE, III bought drinks and dinner for Bodenheimer, Judge A, several other judges, and several of the judges' family members at a casino in Biloxi, Mississippi.

k. In June 2001, at BBU's request, Bodenheimer set a $50,100.00 commercial bond and a $175,000.00 personal surety bond on a defendant for the offense of attempted first degree murder.

l. On or about October 21, 2001, at BBU's request, Bodenheimer set a $15,000.00 commercial bond on a defendant who was a fugitive from Texas. Notwithstanding the bond amount set by Bodenheimer, BBU charged the defendant for a $20,000.00 bond.

m. On or about October 29, 2001, at BBU's request, Bodenheimer split a $100,000.00 bond on a defendant who had been arrested for attempted second degree murder into a $25,000.00 commercial bond and a $75,000.00 personal surety bond.

n. On January 24, 2002, the defendant, LOUIS M. MARCOTTE, III, along with Bail Bondsman #1 and another BBU employee, bought lunch for Bodenheimer, Judge A, and another judge at a restaurant in Gretna, Louisiana, at a cost in excess of $300.00.

o. On March 11, 2002, LOUIS M. MARCOTTE, III bought lunch and drinks for Bodenheimer and another judge at a restaurant in New Orleans at a cost in excess of $400.00.

p. Beginning in or about 2000 and continuing until in or about 2002, LOUIS M. MARCOTTE, III discussed with Bodenheimer investment and/or partnership opportunities in

several businesses. Some of these offers included financial arrangements in which MARCOTTE would disguise Bodenheimer's interest in the business venture.

q. Between September 2000 and June 2002, at BBU's request, Bodenheimer split approximately 350 bonds and set approximately 450 bonds.

3. Corruption of Judge A

a. Beginning on a date unknown and continuing until the date of this bill of information, LOUIS M. MARCOTTE, III provided Judge A with cash payments, gifts, meals, and other things of value. In return, Judge A was available to BBU; quickly responded to the requests of BBU; and set, reduced, increased, and split bonds to maximize BBU's profits, minimize BBU's liability, and hinder BBU's competition.

b. From a date unknown through 2001, BBU furnished parking spaces free of charge for Judge A's secretary and staff. In fact, on or about September 4, 2001, when an employee of another judge attempted to take two of Judge A's spaces, an employee of BBU reassured Judge A's secretary that LOUIS M. MARCOTTE, III had given 4 parking spaces to Judge A's staff. Later that day, the BBU employee stated that MARCOTTE gave Judge A's staff the parking spaces because Judge A "is very good to us."

c. In April 2001, at BBU's request, Judge A set a $100,000.00 commercial bond and $250,500.00 personal surety bond for a defendant.

d. On or about September 14, 2001, a BBU employee called Judge A concerning a bond for a defendant. The BBU employee told Judge A that the defendant's family was able to post a $10,000.00 commercial bond. The defendant had been arrested on September 5, 2001 for drug and firearms charges. On September 17, 2001, Judge A split the defendant's bond into a $10,000.00 commercial bond and a $15,000.00 personal surety bond. After being released on the bond set by Judge A, the defendant was arrested on September 29, 2001 for bond violations and again on December 8, 2001 for possession and distribution of crack cocaine. On or about December 12, 2001,

at the request of BBU, Judge A signed another bail order releasing the same defendant on an $8,000.00 commercial bond and a $22,000.00 personal surety bond.

e. In September 2001, a BBU employee called Judge A concerning a bond for a defendant. The BBU employee told Judge A that the defendant could afford a $5,000.00 commercial bond. Judge A set the bond that BBU requested, and the defendant was released later that evening.

f. On or about October 19, 2001, Bail Bondsman #1 and Judge A played golf together. During the golf game, a BBU employee called Bail Bondsman #1 to ask if Judge A would sign several bonds. Later that day, Judge A set a $125,000.00 commercial bond and a $396,500.00 personal surety bond for one defendant and a $10,000.00 commercial bond and a $10,000.00 personal surety bond for another defendant.

g. On October 21, 2001, LOUIS M. MARCOTTE, III told Bail Bondsman #1, "I know we wrote a lot of freaking bail." Bail Bondsman #1 told LOUIS M. MARCOTTE, III, "Friday out on the golf course with the judge [Judge A], I did about $250,000.00 for the uh, uh, Gretna house." Later in the conversation, Bail Bondsman #1 and LOUIS M. MARCOTTE, III discussed giving Judge A cash but writing on the envelope "[Judge A] Campaign Fund." Although LOUIS M. MARCOTTE, III stated that a cash gift was "completely legal," he further stated, "We need to watch . . . what we say on the phone 'cause we're saying, saying, ah, . . . I'm more worried about the office phone but maybe mine too . . . ." Bail Bondsman #1 then stated, ". . . what we saying, there ain't nothing wrong. I just want to make sure I can give cash. If a man asks for cash for his fundraiser, I want to give cash . . . ." LOUIS M. MARCOTTE, III and Bail Bondsman #1 further discussed giving "five."

h. On October 22, 2001, at the direction of LOUIS M. MARCOTTE, III, Bail Bondsman #1 gave Judge A $5,000.00 in cash. On October 23, 2001, Judge A deposited $1,500.00 in cash into his personal bank account. On October 31, 2001, Judge A deposited $720.00 in cash into his personal bank account.

i. On November 30, 2001, Judge A and Bail Bondsman #1 played golf together. The same day, Judge A set a $2,000.00 commercial bond for one defendant and a $20,000.00 commercial bond and a $60,000.00 personal surety bond for another defendant, all at the request of BBU.

j. On December 4, 2001, Bail Bondsman #1 bought lunch for Judge A at a restaurant in Gretna, Louisiana. The same day, at the request of BBU, Judge A set a $10,000.00 commercial bond and a $31,500.00 personal surety bond on a defendant.

k. On December 6, 2001, Bail Bondsman #1 bought lunch for Judge A at a restaurant in Gretna, Louisiana. The same day, at BBU's request, Judge A set a $30,000.00 commercial bond and a $110,000.00 personal surety bond on a defendant.

l. On December 18, 2001 BBU paid for a Christmas luncheon for Judge A's staff at a restaurant in New Orleans, Louisiana in an amount in excess of $700.00. BBU also furnished the liquor for another Christmas party hosted by Judge A.

m. On January 8, 2002, Bail Bondsman #1 and Judge A played golf together. The same day, at BBU's request, Judge A set a $25,000.00 commercial bond and a $33,000.00 personal surety bond for a defendant.

n. On February 12, 2002, Bail Bondsman #1 cashed out $200.00 from BBU for "entertainment" for Judge A. The next day, Bail Bondsman #1 and Judge A played golf in Pass Christian, Mississippi. On February 15, 2002, Judge A deposited $200.00 cash into his personal checking account.

o. On February 13, 2002, at the request of BBU, Judge A set a $4,000.00 commercial bond and a $6,000.00 personal surety bond for a defendant.

p. On April 3, 2002, in Judge A's chambers, Bail Bondsman #1 pulled an envelope containing $5,000.00 in cash out of his pants pocket and handed it to Judge A saying, "Coming to deliver on my promise." Judge A responded, "Appreciate it." Bail Bondsman #1 further stated, "Put that away somewhere." On August 20, 2002, Judge A wrote a check from his personal

checking account to BBU in the amount of $5,000.00 and a second check from his personal checking account to Bail Bonds, Inc. for $5,000.00. Both checks were mailed to Bail Bondsman #1.

q. Between September 2000 and December 2002, at BBU's request, Judge A split approximately 140 bonds and set approximately 268 bonds.

4. Attempts to Corruptly Influence Certain Other 24th JDC Judges

Beginning at a date unknown and continuing until the date of this bill of information, LOUIS M. MARCOTTE, III provided certain other 24th JDC Judges with things of value. In return, these judges were available to BBU; quickly responded to the requests of BBU; and set, reduced, increased, and split bonds to maximize BBU's profits, minimize BBU's liability, and hinder BBU's competition.

5. Corruption of Certain Sheriff's Deputies

a. Beginning at a date unknown but prior to 1991 and continuing until the date of this bill of information, LOUIS M. MARCOTTE, III and other employees of BBU made cash payments to Deputy #1 and Deputy #2 in amounts ranging from $20.00 to $200.00 per occurrence.

b. Beginning on a date unknown and continuing until the date of this bill of information, LOUIS M. MARCOTTE, III and other employees of BBU frequently purchased meals for JPSO Deputies while they were on duty at the Intake and Booking Section of the Jefferson Parish jail.

c. Between 1995 and 1997, LOUIS M. MARCOTTE, III paid for two JPSO Deputies to take a trip to Las Vegas, Nevada.

d. In or about 1997, a BBU employee gave Deputy #2 and several other deputies watches that LOUIS M. MARCOTTE, III had purchased on a trip to New York, New York.

e. In or about 1997, LOUIS M. MARCOTTE, III provided a JPSO Deputy assigned to the Intake and Booking Section of the Jefferson Parish jail with the use of a vehicle at no charge. Later that year, LOUIS M. MARCOTTE, III purchased a grey Nissan Maxima for that deputy at a cost of approximately $1,800.00.

f. In or about 1998, at the direction of LOUIS M. MARCOTTE, III, a BBU employee gave Deputy #2 $1,600.00 in cash so that Deputy #2 could purchase handguns for himself and several other JPSO deputies.

g. Between 1998 and 2000, MARCOTTE purchased automobile tires for Deputy #2.

h. Beginning on or about January 18, 1999 and continuing until the present, LOUIS M. MARCOTTE, III and BBU employed the son of Deputy #3 in order to curry favor with Deputy #3.

i. In 1999, at the direction of LOUIS M. MARCOTTE, III, a BBU employee bought meals for Deputy #2 and several other deputies on numerous occasions at a restaurant on Lapalco Boulevard.

j. In or about December 2001, a BBU employee gave Deputy #2 $130.00 in cash to take several JPSO Deputies out for drinks at a restaurant in New Orleans.

k. On February 12, 2002, LOUIS M. MARCOTTE, III called Deputy #2 to discuss MARCOTTE's concern about competition from a former BBU employee. Deputy #2 told LOUIS M. MARCOTTE, III that he would tell the JPSO deputies not to accept anything from the former BBU employee.

l. Beginning on February 20, 2002, and continuing until August 21, 2002, BBU paid for a cellular telephone for Deputy #3 at a total cost exceeding $700.00.

m. On March 9, 2002, LOUIS M. MARCOTTE, III and Bail Bondsman #2 had a conversation in which Bail Bondsman #2 explained that he had been paying Deputy #2 $100.00 a week. Bail Bondsman #2 stated, "I have to go outside and tell you this. I had to get, um, [Deputy #2] a hundred dollars. That alright, huh?" LOUIS M. MARCOTTE, III asked, "For what?" Bail Bondsman #2 responded, "Because Lori told me to do it every week."

n. Beginning in or about May 2000 and continuing through 2002, LOUIS M. MARCOTTE, III paid JPSO Lieutenant Guy Maynard Crosby approximately $1,000.00 per month

and provided the unlimited use of a cellular telephone in order to influence Crosby to illegally use the National Crime Information Center's computer data base to locate and identify fugitives released on bail bonds written by BBU to facilitate their apprehension and thereby obviate costly bond forfeitures which inured to the financial benefit of BBU and/or MARCOTTE.

6. The Fraud Against Amwest

a. In or about December 1999, LOUIS M. MARCOTTE, III and others known to the United States Attorney, sought to withdraw approximately $650,000.00 from the BUF account held in trust with Amwest in order to expand his bail bond business to other states. To do so, Amwest required MARCOTTE to substitute real property having equity of approximately $650,000.00 to collateralize the BUF.

b. On or about December 20, 1999, LOUIS M. MARCOTTE, III and others known to the United States Attorney, mailed a letter to Amwest enclosing a fraudulent real estate appraisal dated December 16, 1999 on his personal residence indicating it was worth approximately $800,000.00 when in fact MARCOTTE and others known to the United States Attorney, well knew that it was worth significantly less than $800,000.00. Additionally, MARCOTTE and others known to the United States Attorney, in the same mailing, sent Amwest an Act of Mortgage for $700,000.00 on his personal residence knowing that the actual unencumbered value of his residence was significantly less, all designed to induce Amwest to release approximately $500,000.00 from the BUF to BBU.

c. On or about December 28, 1999, Amwest mailed a letter enclosing a check made payable to BBU in the sum of $400,000.00. This letter further referenced an earlier disbursement by Amwest in the form of a $100,000.00 check dated December 6, 1999 made payable to BBU. LOUIS M. MARCOTTE, III and others known to the United States Attorney deposited those checks into the accounts of BBU.

d. On or about December 29, 1999, LOUIS M. MARCOTTE, III and others known to the United States Attorney mailed a letter through a private interstate carrier to Amwest

enclosing a fraudulent real estate appraisal dated December 29, 1999 on real property located at 1708 Williams Boulevard, Kenner, Louisiana indicating it was worth approximately $146,000.00 when in fact, LOUIS M. MARCOTTE, III and others known to the United States Attorney, well knew it was worth significantly less than the appraised value. Additionally, MARCOTTE and others known to the United States Attorney, in the same mailing, sent Amwest an Act of Mortgage for $150,000.00 on 1708 Williams Boulevard, Kenner, Louisiana, knowing that the actual value of this property was significantly less, all designed to further induce Amwest to release approximately $150,000.00 from the BUF to BBU.

e. On or about January 4, 2000, Amwest mailed a check payable to BBU in the sum of $150,000.00 to LOUIS M. MARCOTTE, III which was thereafter deposited into the account of BBU.

f. In or about May of 2001, LOUIS M. MARCOTTE, III, and others known to the United States Attorney, knowing that Amwest was experiencing significant financial difficulties and fearing that his personal residence would be entangled in a protracted insurance liquidation proceeding in another state, devised a scheme to release his personal residence as collateral to the BUF. This scheme included the substitution of other real estate of inferior value to his personal residence as collateral.

g. On or about May 31, 2001, LOUIS M. MARCOTTE, III, and others known to the United States Attorney, mailed a letter to Amwest enclosing a fraudulent real estate appraisal dated May 24, 2001 on real property located at 415-417 Derbigny Street, Gretna, Louisiana indicating it was worth approximately $180,000.00 when in fact MARCOTTE and others known to the United States Attorney, well knew it was worth significantly less than the stated appraised value. Additionally, MARCOTTE and others known to the United States Attorney, in the same mailing, enclosed another fraudulent real estate appraisal dated March 25, 2001 on real property located at 418-420 South Broad Street, New Orleans, Louisiana indicating that it was worth approximately $275,000.00 when in fact MARCOTTE and others known to the United States

Attorney well knew it was worth significantly less than the stated appraised value as it had suffered serious and devaluing fire damage on or about June 28, 2000. Moreover, in this mailing, MARCOTTE and others known to the United States Attorney, enclosed fraudulent mortgage and real estate security instruments securing these properties in favor of Amwest, all designed to deceive Amwest into believing that it had received substituted collateral for MARCOTTE's personal residence of equal or greater value. Federal Express records confirm that BBU sent a mailing to Amwest on or about June 7, 2001; and Amwest's records confirm receipt of such a mailing.

h. On or about June 7, 2001, LOUIS M. MARCOTTE, III, and others known to the United States Attorney, mailed a letter through a private interstate carrier enclosing fraudulent mortgage and security instruments on 415-417 Derbigny Street, Gretna, Louisiana and 418-420 South Broad Street, New Orleans, Louisiana in favor of Amwest indicating that these security instruments had been recorded in the official mortgage records for Jefferson and Orleans Parishes respectively, all the while knowing that MARCOTTE and others known to the United States Attorney, had cancelled or never filed these security instruments.

All in violation of Title 18, United States Code, Section 1962(d).

COUNT 2 - CONSPIRACY TO COMMIT MAIL FRAUD

A. At All Times Material Herein:

1. The allegations contained in Section A of Count 1 are reincorporated as if fully realleged.

2. The defendant, LORI M. MARCOTTE, was a Gretna, Louisiana bail bond agent and the Vice President of BBU.

B. The Scheme:

1. Beginning on an exact date unknown, but in or before 1998, and continuing until the date of this bill of information, in the Eastern District of Louisiana and elsewhere, the defendant, LORI M. MARCOTTE, and others, known and unknown to the United States Attorney, knowingly and willfully devised and intended to devise a scheme and artifice to defraud and to deprive the

citizens of the State of Louisiana of the honest and faithful services, performed free from deceit, bias, self-dealing, and concealment, of certain Jefferson Parish Sheriff's Deputies in the performance of their official duties in the Intake and Booking Section of the Jefferson Parish jail.

2. It was part of the scheme and artifice to defraud that, in connection with the processing of inmates and bonds, LORI M. MARCOTTE corruptly provided JPSO Deputies with cash payments, gifts, and other things of value, in order to influence the deputies in the performance of their officials duties, more particularly to give BBU preferential treatment at the Jefferson Parish jail so as to maximize BBU's profits and hinder its competition.

C. The Conspiracy

From in or about 1998, and continuing through the date of this bill of information, in the Eastern District of Louisiana and elsewhere, the defendant, LORI M. MARCOTTE, and others known and unknown to the United States Attorney, did knowingly and willfully conspire, combine, confederate and agree together to knowingly and willfully cause mail to be delivered by the United States Postal Service for the purpose of executing the scheme set forth in Section B, in violation of Title 18, United States Code, Sections 1341 and 1346.

D. Overt Acts

In furtherance of the conspiracy and to accomplish its purposes, the defendant, LORI M. MARCOTTE, and others known and unknown to the United States Attorney, committed the following overt acts, among others, in the Eastern District of Louisiana and elsewhere:

1. Between 1998 and 2000, LORI M. MARCOTTE purchased automobile tires for Deputy #2.

2. In or about December 2001, LORI M. MARCOTTE gave Deputy #2 $130.00 in cash to take several JPSO Deputies out for drinks at a restaurant in New Orleans.

3. In 2001, LORI M. MARCOTTE gave Deputy #2 $150.00 in cash.

4. Beginning on February 20, 2002 and continuing until August 21, 2002, LORI M. MARCOTTE paid for a cellular telephone for Deputy #3 at a total cost exceeding $700.00.

5. On March 9, 2002, LOUIS M. MARCOTTE, III and Bail Bondsman #2 had a conversation in which Bail Bondsman #2 explained that he had been paying Deputy #2 $100.00 a week. Bail Bondsman #2 stated, "I have to go outside and tell you this. I had to get, um, [Deputy #2] a hundred dollars. That alright, huh?" LOUIS M. MARCOTTE, III asked, "For what?" Bail Bondsman #2 responded, "Because Lori told me to do it every week."

6. On or about June 11, 2002, LORI M. MARCOTTE caused to be mailed BBU Check No. 6212 as payment for BBU's cellular telephone bill, including the cellular telephone given to Deputy #3.

All in violation of Title 18, United States Code, Section 371.

NOTICE OF RACKETEERING FORFEITURE

1. The allegations of Count 1 of this bill of information are realleged and incorporated by reference as though set forth fully herein for the purpose of alleging forfeiture to the United States of America pursuant to the provisions of Title 18, United States Code, Section 1963.

2. LOUIS M. MARCOTTE, III

a. has interests which he acquired and maintained in violation of Title 18, United States Code, Section 1962, making all such interests subject to forfeiture to the United States of America, pursuant to Title 18, United States Code, Section 1963(a)(1);

b. has interests in, security of, claims against, and/or property and contractual rights affording him a source of influence over the enterprise which he established, operated, controlled, conducted and participated in the conduct of, in violation of Title 18, United States Code, Section 1962, thereby making all such interests, security, claims against, property and contractual rights wherever located, and in whatever names held, subject to forfeiture to the United States of America, pursuant to Title 18, United States Code, Section 1963(a)(2); and

c. has property constituting, or derived from, any proceeds which he obtained directly and indirectly from racketeering activity in violation of Title 18, United States Code, Section

1962, thereby making such property subject to forfeiture to the United States of America pursuant to Title 18, United States Code, Section 1963(a)(3).

3. The property described above includes, but are not limited to, the following:

a. The equity in real property located at 217 Derbigny Street, Gretna, Louisiana and described as follows:

> Property currently recorded in the name of Sisters Marcotte, L.L.C., and described as follows: One certain lot of ground, together with all the buildings and improvements thereon, and all the rights, ways, privileges, servitudes, appurtenances and advantages thereunto belonging or in anywise appertaining, situated in the Village of New Mechanickham (now part of the City of Gretna), in the Parish of Jefferson, State of Louisiana, on the right bank of the Mississippi River and opposite the Fourth District of the City of New Orleans, designated by the Lot 7 of Square No. 6, which square is bounded by Derbigny, Second and Third Streets and the upper line of the Village of Mechanickham, on a plan by J. A. D'Hemecourt, Surveyor, dated November 13, 1872, in correction of a plan drawn by J. G. Dreaux, C.E. on March 13, 1872, and deposited in the office of W. J. McCune, late Notary for this Parish (Jefferson), and which said lot measures 31 feet 5 inches and 4 lines (31' 5" 4''') front on Derbigny Street, by a depth of 180 feet (180') between parallel lines. The improvements thereon bear Municipal No. 217 Derbigny Street, Gretna, Louisiana;

b. And a sum of money in U.S. Currency which, in aggregate with the equity in 217 Derbigny Street, Gretna, Louisiana, is equal to $250,000 in U.S. Currency;

4. If any of the property described above as being subject to forfeiture, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third person;

c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 1963(m), to seek forfeiture of any other property of said defendants up to the value of the above forfeitable property.

All in violation of Title 18, United States Code, Section 1963.

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New Orleans, Louisiana
March 3, 2004